

EXHIBIT 416

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

STACIA STINER, et al.,

Plaintiffs,

v.

BROOKDALE SENIOR LIVING INC. et al.,

Defendants.

Case No. 4:17-CV-03962-HSG (LB)

**DECLARATION OF DOUGLAS J.
ANDERSON IN SUPPORT OF
DEFENDANT'S RESPONSE IN
OPPOSITION TO PLAINTIFFS' MOTION
FOR CLASS CERTIFICATION**

I. Background/Qualifications

1. I am a Partner at LCM Architects ("LCM"), a Chicago-based architectural firm that specializes in accessible design requirements of Title III of the Americans with Disabilities Act ("ADA") and federal, state, and local disability access laws. My business address is 819 S. Wabash Ave., Fifth Floor, Chicago, IL 60605, (312) 913-1717.

2. I have served as an expert consultant on the ADA's accessibility requirements for facilities since 1998 and am thoroughly familiar with the requirements of the 1991 ADA Standards for Accessible Design (the "1991 Standards") and the 2010 ADA Standards for Accessible Design codified at 28 C.F.R. Part 36, Subpart D (2011) and 36 C.F.R. Part 1191, Appendices B and D (2009) (the "2010 Standards"). I acquired my extensive knowledge of the ADA's accessibility standards over the course of 30 years.

3. From 1992 to 1998, I was the ADA Technical Assistance Specialist and Coordinator at the Great Lakes Disability and Business Technical Assistance Center ("Great Lakes ADA Center") which received funding by the U.S. Department of Education National Institute on Disability and Rehabilitation Research to provide education and training to the public about the ADA Regulations and ADA Standards for Accessible Design.

1 4. Since joining LCM in 1998, I have personally conducted close to 900 inspections of
2 public accommodations facilities to assess their conformance with the 1991 or 2010 Standards.

3 5. I have been retained as the independent ADA consultant tasked to inspect facilities
4 covered by consent decrees and settlements for Hilton Worldwide and Carnival Cruise Lines, with the
5 approval of the U.S. Department of Justice. I am serving as the independent ADA consultant assisting
6 in the implementation of a nationwide ADA Title III class action settlement with Cracker Barrel.

7 6. I am a Certified Access Specialist (“CASP”) in California and a Registered Accessibility
8 Specialist in Texas – the only two states that certify access specialists (following a rigorous written
9 examination) who can conduct inspections and review plans for compliance with the ADA and state
10 accessibility standards.

11 7. Since 2015, I have served as a member of the ANSI A117.1 Accessibility Standards
12 Committee. This committee develops the accessibility standards for the International Building Code
13 which is a model building code that many states ultimately adopt as their building code. In 2020, I was
14 appointed to serve as the Chair of the Accessible Bathing Task Group.

15 8. From 2003 to 2011, I served as a member of the U.S. Access Board, the federal agency
16 responsible for developing the 1991 and 2010 Standards which were then adopted by the DOJ into its
17 ADA regulations. I was Chairman of the U.S. Access Board from 2009 to 2010.

18 9. I have been retained by the U.S. Department of Justice (“DOJ”) as a subject matter expert
19 on three different occasions, most recently as a subject matter expert related to plan review and
20 construction review of the Belmont Park Arena in New York. The second occasion was also working as
21 a subject matter expert managing surveys and reporting in a multifamily housing case involving over 50
22 housing developments for the DOJ. Third, I have completed surveys related to settlements for three
23 additional multifamily housing matters. Of those three settlements, one involved an agreement between
24 private parties regarding multifamily housing developments located throughout the country, one
25 involved a DOJ settlement regarding senior living facilities in the New England region, and one
26 involved a voluntary compliance agreement between a city agency and the Department of Housing and
27 Urban Development (“HUD”) regarding properties subject to the Rehabilitation Act, California Building
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Code, ADA, and Fair Housing Act (“FHA”). As part of this DOJ-HUD matter, I conducted two multiday trainings for architects and building code officials in California which involved both classroom and field trainings.

10. I have conducted over 50 full day trainings nationwide on the Fair Housing Act and multifamily housing for HUD. I was also one of the lead editors of HUD’s second edition of the Fair Housing Act Design Manual.

II. Methodology for Assessing Existing Facilities

11. Based upon my training and experience, the proper methodology for accurately assessing existing facilities for compliance with accessibility codes and standards requires four steps. These include:

1. Determine the original construction date and type of occupancy.
2. Determine if alterations have occurred since the original construction date.
3. Determine if any applicable code or standard requires modifications to existing elements and if those modifications are readily achievable.
4. Perform an on-site survey using generally accepted best practices to evaluate each element for compliance with any applicable code or standard.

12. Without researching the information in Steps 1 - 3, it is not possible to accurately determine what codes or standards apply to each element within each facility. Without knowing what code or standard applies, you do not know what elements must be evaluated or the required measurements for those elements. You therefore cannot accurately determine if the existing elements are compliant or noncompliant with the applicable accessibility codes and standards.

13. For example, until 2007 the California Building Code (“CBC”) allowed a 42” by 48” configuration for accessible showers, as shown in the photo and diagram immediately below this paragraph. The Communities involved in the present case were built between 1961 and 2007. However, the Plaintiffs’ experts used the 2016 and 2019 versions of the CBC to evaluate all of the Communities, regardless of construction or alteration date, and both of those versions of the CBC require different shower configurations. Without knowing when the shower was built or last altered, it

is not possible to know which shower configuration was required at the time of construction or alteration. The Plaintiffs' experts' practice of assuming all elements of all facilities regardless of their construction or alteration date must comply with the most current accessibility codes and standards is incorrect.

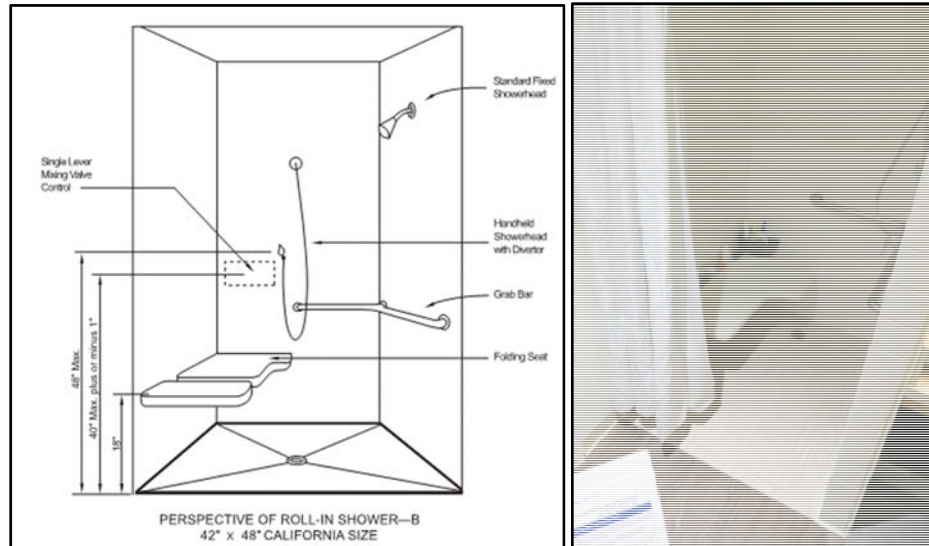
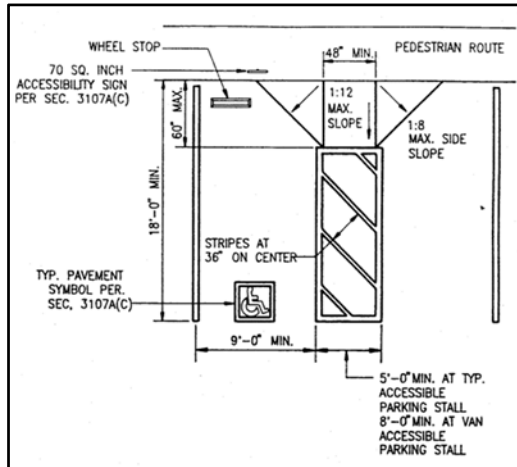


Diagram of 42" by 48" shower from the CBC and photo from an existing condition from a Community.

14. As another example, built-up curb ramps were allowed in access aisles of accessible parking spaces in the CBC until 1994. If a parking lot has those built up curb ramps, and has not been altered since 1994, then there is no violation of the CBC. However, this is a condition that the Plaintiffs' experts called out as a violation at multiple Communities, without regard to the date of construction or alteration of the parking lot. To illustrate, below is a diagram of a built-up curb ramp from the 1994 CBC and photo of an existing built-up curb ramp condition from a Community from Plaintiffs' experts' report, but for which they did not note the date of construction or alteration.



15. The Certified Access Specialist Program Best Practices Manual issued by the California Division of the State Architect states:

It is recommended that the CASp ask the owner about the construction history of the facility so that the applicable standards can be determined, in order to establish the basis of the inspection. If the applicable standards are unable to be determined, it is recommended that the CASp advise the owner that using current standards instead of the applicable standards may lead to additional improvements as a result of the more restrictive compliance requirements of current standards.

16. In keeping with best practices, the following describes the steps necessary to conduct an accurate evaluation of existing facilities.

Step One – Determine the original construction date and type of occupancy.

17. Step One begins with researching permit records from the local building department or permit plans to verify the original occupancy type and first occupancy date. This information is necessary to determine what edition of the CBC might apply to the facility, if the facility would be subject to the design and construction requirements of the FHA, and if the facility falls within one of the twelve categories listed as a potential place of public accommodation under the ADA. Exhibit 1 to this Declaration diagrams the process for completing Step One.

18. Step One must be fully completed before the inspector conducts the onsite survey because knowing the elements that must be reviewed, the dimensions used to evaluate the elements, and

any requirement for a number of units to which accessibility requirements may apply is essential to properly completing the assessment.

19. For example, if the FHA applied to the property, the reviewer would need to know which of the 15 safe harbors was used to meet the FHA design and construction requirements and you would need to review each dwelling unit to verify compliance. See Exhibit 2 to this Declaration for a list of FHA Safe Harbors.

20. The DOJ has not provided any guidance or interpretation to suggest that residential assisted living facilities are a place of public accommodation or must comply with Title III of the ADA. If, however, the ADA did apply to a portion of an existing property, you would need to know if the 1991 or 2010 ADA Standards applied and into which of the twelve categories of public accommodation the facility would be classified, as the requirements differ between the 1991 and 2010 Standards and the public accommodation categories.

21. Once the applicable codes and standards that apply to the facility are identified, the inspector begins Step Two prior to the survey of each facility.

22. In the present matter, the Plaintiffs' experts used new construction standards in the 1991 and 2010 ADA Standards and the 2016 and 2019 CBC to evaluate the compliance of all 40 Communities they inspected, regardless of the Community's date of construction or any alterations.

23. Exhibit 3 to this Declaration shows the construction dates for each Community, based on the information that we have, and consistent with the dates reflected in materials to which Plaintiffs' experts referred. Over 50% of the Communities were constructed prior to the 1991 ADA Standards, and 100% of the facilities were constructed prior to the 2010 ADA Standards and 2016 and 2019 CBC. Therefore, applying the new construction standards is inappropriate. You must apply the applicable standard in effect when each Community was built.

Step Two – Determine if alterations have occurred since the original construction date.

24. Step Two involves researching records from the building department or information from the building owner to determine if any alterations had occurred after the original construction and occupancy date. This is important because alterations would be subject to the accessibility code or

1 standard that was in effect at the time of the alteration.

2 25. It is critical to know what elements were altered and where in the facility the alterations
3 took place so that the appropriate code or standard can be used to evaluate compliance of the altered
4 area(s) or element(s). Often you will have multiple versions of a building code apply to different areas
5 of a facility due to alterations that have taken place in different places over the life span of the facility.

6 26. For example, if a common single-user toilet room in a facility built in 2008 is renovated
7 today, it would be required to increase the clearance around the toilet to 60” if feasible to comply with
8 the 2019 CBC requirements. Other unaltered toilet rooms in the facility would be remain compliant
9 with 28” of clearance from the edge of the toilet to an adjacent sink—which was the CBC requirement
10 when the facility was built. Both toilet rooms would be compliant, but two different versions of the
11 CBC must be used to evaluate them. It would be necessary to know which toilet rooms were altered in
12 order to evaluate each one using the proper code or standard. Exhibit 4 to this Declaration diagrams the
13 process for completing Step Two. I saw no evidence that Plaintiffs’ experts did this.

14 **Step Three – Determine if any applicable code or standard requires modifications to existing**
15 **elements and if those modifications are readily achievable or provide equivalent facilitation.**

16 27. The final step for conducting an accessibility survey is to determine if there is any code
17 or standard that would require elements that have not been altered to be modified to comply with a more
18 recent version of the building code or standard. Exhibit 5 to this Declaration diagrams the process for
19 completing Step Three.

20 28. The ADA imposes an ongoing obligation on places of public accommodation to remove
21 barriers where it is readily achievable (in other words, without significant difficulty or expense) to do so,
22 to bring the elements into compliance with current accessibility standards. If an element does not
23 comply with current 2010 Standards (or 1991 Standard if the element fell into in the safe harbor
24 afforded at the time the 2010 Standards went into effect) and was not technically required to comply due
25 to the date of construction or alteration, the next step is to determine whether removal of that barrier is
26 readily achievable. California law differs from the ADA here, and does not require readily achievable
27 barrier removal. If it is not readily achievable to remove the barrier, the ADA does not consider the
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1 barrier a violation of law nor require it to be removed (until/if it becomes readily achievable to remove
2 the barrier at some later time).

3 29. The surveyor must assess each barrier on a case-by-case basis to determine if the removal
4 would be readily achievable. The work that could be required to modify an existing condition to comply
5 with the ADA Standards may require extensive work or not be possible due to structural constraints or,
6 for example, the location of electrical chases, plumbing chases, or elevator shafts. This evaluation
7 would begin in the field, with the surveyor collecting measurements, photos, and other information
8 about the barrier, as well as information about the structural conditions surrounding the barrier. Even
9 still, a surveyor cannot know the financial ability of a building owner to remove barriers (to know
10 whether the barrier might require significant expense to remove) and usually a surveyor cannot
11 determine if a proposed barrier removal is something that is easy to accomplish without too much
12 difficulty without more information about the building constraints.

13 30. We also need to consider whether any condition, even if it might constitute a technical
14 barrier under the applicable ADA Standards, might be considered a permissible equivalent facilitation.
15 For example, if a resident requests a specific modification to a facility to increase access to them due to
16 their disability, that would be considered an equivalent facilitation that provides equal or even greater
17 access than what any applicable access standard might require. The equivalent facilitation analysis is
18 specific to and varies element by element, person by person, and condition by condition.

19 31. A surveyor also needs to consider which portions of a facility are open to the public and
20 which portions are not. In residential facilities, generally the only portions that are covered by the ADA
21 are the sales or leasing office (if the facility has one and it is open to the public), or common spaces
22 where the public accesses its services (for example, if an apartment complex has a coffee shop that is
23 open to the public but all other areas are resident-only, only the coffee shop would be subject to the
24 ADA). As another example, for residential facilities that have sales offices that are open to the public,
25 the only areas subject to the ADA would be the future resident parking (if provided), an entrance, the
26 sales office, and the restrooms serving the sales office. In my inspections of Communities at issue in the
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present matter, it varied as to if a Community had a sales office, as well as whether that sales office was open to the general public.

Step Four – Perform an on-site survey using generally accepted best practices to evaluate each element for compliance with any applicable code or standard.

32. After gathering the background information regarding construction dates, alteration dates, and evaluation of the applicable codes and standards, a surveyor should look for information regarding each facility's site plan, building layout, unit plans, and common areas. This exercise provides additional information about possible changes that were made during construction, any subsequent alterations, and to plan for an efficient survey.

33. The surveyor then conducts an on-site survey. The survey consists of identifying and inspecting any specific rooms or other areas that are subject to accessibility requirements. The tools used to evaluate the facility should provide a level of accuracy that would equal the standard used, mandated, and/or recommended by state or federal enforcement agencies. In our work with the DOJ, the DOJ requires the use of a digital two-foot level for assessing the running slope of and cross slope of accessible routes including sidewalks and ramps, as well as for the levelness of door maneuvering clearances, accessible passenger loading zones, accessible parking spaces, and clear floor spaces. The following are the standard survey tools used by the DOJ Civil Rights Division in conducting its accessibility surveys: a metal measuring tape that is at least 25-feet long; a two-foot long electronic (digital) level; a digital camera (one with at least three megapixels of resolution with a zoom feature can be used to photograph measurements on tape measures and digital levels); and a pressure gauge.

34. Another consideration in surveying existing conditions is that standard industry tolerances apply to all constructed conditions and will vary depending on the method of construction and construction material. For instance, the anticipated plumbness of a tiled wall using a wood-studs, concrete backer board, 3/8" ceramic tile and thin set mortar will be allowed a greater tolerance range than a sink cabinet that is manufactured in a factory. This is a recognized allowance in both the CBC and ADA Standards and the DOJ makes allowances for these deviations under Section 3.2 of the 1991 Standards, and 104.1.1 of the 2010 Standards, as well as under Section 104.1.1 of the 2016 and 2019

1 CBC.

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3 35. When surveying facilities that have multiple buildings located in the same or different
4 locations, buildings built from a prototype plan will require less survey preparation and the survey
5 execution will be more efficient. Prototype facility layouts also allow for more efficient development of
6 prototype accessibility modifications.

7 36. There was no such prototype facility or layout here. With the Communities at issue in
8 this matter, each Community had a different site plan, building plan, and unit plans. Each Community
9 was developed, constructed, and experienced any alterations at different times, by different owners,
10 managers, contractors, and architects, and would therefore be subject to different building codes.

11 **III. Findings Regarding Existing Facilities**

12 37. When I was asked to review Plaintiffs' experts' findings of the Communities which the
13 Plaintiffs' experts had surveyed, I and my team reviewed the Plaintiffs' experts' reports and other
14 documents and information that we were informed Plaintiffs had produced in this matter. We then
15 performed in-person surveys of 37 of the Communities which Plaintiffs' experts had inspected. For
16 these surveys, we inspected the apartments and common areas that Plaintiffs' experts stated in their
17 reports that they inspected.

18 38. I reviewed original construction documents and building department records which
19 Plaintiffs had produced, and which Defendants had produced to Plaintiffs, to verify whether the codes
20 Plaintiffs' experts used were appropriate based on the time of any construction and alterations (without
21 making any determination of whether the ADA would actually apply to a given Community). See
22 Exhibit 3 to this Declaration for a timeline showing when each facility was constructed and the codes
23 and standards in effect. Exhibit 6 contains building plans for a sample of Communities, which shows
24 that the buildings were built using different building plans.

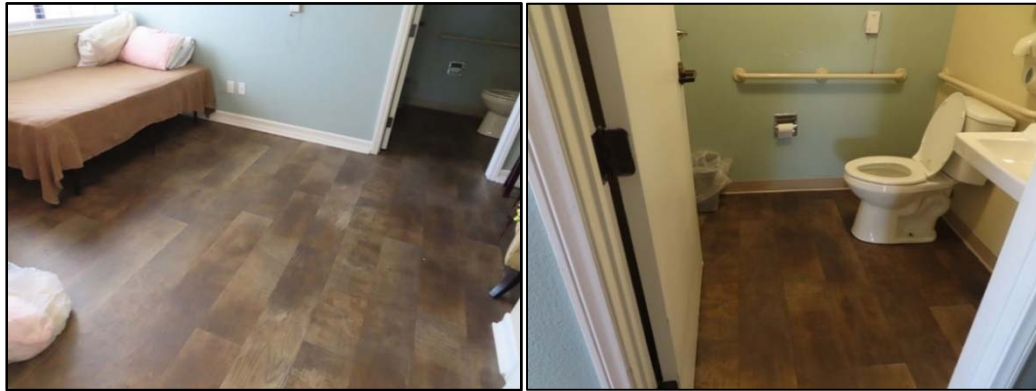
25 39. I reviewed the layout for each Community to better understand what I would be
26 surveying and to plan an efficient survey. Exhibit 7 contains aerial views showing the site layout for
27 each community, and plainly illustrates that each site is different.

1 40. Exhibit 8 contains unit layouts from some of the communities, showing that the units at
2 each community were designed using different footprints and/or layouts.

3 41. From the surveys, I found that the elements identified as barriers in Plaintiffs' experts'
4 reports varied greatly in configuration, measurements, and more. I noticed that features Plaintiffs'
5 experts identified in their reports as violations in one Community or in one room were compliant in
6 other Communities or in other rooms in the same Community. Exhibit 9 illustrates the many different
7 configurations of elements identified in the Plaintiff's experts' reports.

8 42. Even within the same Community, there are not standardized elements or designs, which
9 means each element must be assessed individually to determine whether it is a barrier (rather than
10 making any generalized assumptions that an element in one space will be exactly the same as the
11 element in another space). This also means that making modifications to any one of these conditions
12 may require customized solutions. This demonstrates the need to measure and photograph each element
13 and surrounding conditions to determine if the element violates the applicable standards and if there any
14 readily achievable solutions, or whether an equivalent facilitation may have been provided. I found that
15 in many instances the Plaintiffs' experts failed to do this; instead making generalizations as to "common
16 conditions" that were in fact not common. I noticed that even one the of the Plaintiffs' experts used a
17 matrix he created in which he apparently noted how a certain condition varied greatly in different units
18 within a specific Community. However, the reports were often lacking photos or measurements of some
19 of those conditions, preventing me from assessing whether each condition did in fact constitute a barrier
20 and what—if any—barrier removal measures may have existed and been readily achievable.

21 43. I also found that where Plaintiffs' experts proposed a potential barrier removal action, it
22 may not have taken into account the realities of the condition or space, let alone whether removal of the
23 barrier is readily achievable. For example, Plaintiffs' expert indicated that he found the bathroom
24 shown in the residential unit in the photos below for the Corona Community to lack sufficient turning
25 space. His proposed barrier removal of enlarging and reconfiguring the bathroom in one of the
26 residential units would require reducing the living space and reframing of walls (and assumes the wall
27 proposed to be removed is not load-bearing or containing immovable infrastructure).



Corona Community residential unit.

44. During my inspections, I learned that each Community is responsible for its own alterations, which are designed and constructed independently at each site, and which created further distinctions within and between Communities. During the surveys, the Executive Director (“ED”) and Maintenance Director (“MD”) of each Community informed us that modifications are made case-by-case based on the individual needs and requests of residents, to address maintenance issues, or to refresh finishes, fixtures, and furniture.

45. Some of the modifications we observed or that EDs and MDs noted they had made for residents at their request were the installation or relocation of grab bars (including floor to ceiling grab bars near toilets, showers, or beds), addition of adaptive equipment such as toilet seats with integrated grab bars, removing doors and modifying closets, cutting bathtub walls, and providing adjustable shower chairs. Even if these modifications did not strictly follow any applicable accessibility code or standard, if installed specific to a resident’s request and needs, they would be considered an equivalent facilitation. Some residents requested grab bars mounted at an angle or vertically to be customized to their needs rather than the standard horizontal orientation or lowering or removing a portion of the sidewall of a bathtub to assist with transfer to a bathtub seat or chair. Exhibit 10 to this Declaration contains examples of customized modifications made at residents’ requests.

46. Maintenance is typically not considered an alteration for the purposes of accessibility codes and standards, and, at each Community, maintenance work is often completed by the MD or one

of the MD's staff, subject to the resident's specifications. Because the work is not typically considered an alteration, it would not be subject to review or approval by the local building code department.

IV. Findings Regarding Plaintiff's Expert Reports

47. I was asked to review Plaintiffs' experts' reports of Communities, including conducting an on-site review of actual conditions compared against their findings in each specific Community and units that Plaintiffs' experts had reviewed, and to provide my professional opinions in my capacity as an accessibility expert. The units I inspected were within the set of residential units the Plaintiffs' expert inspected. My opinions as to Plaintiffs' experts' findings follow.

Survey methodology

48. As noted above, the Plaintiffs' experts did not follow proper methodology for surveying existing facilities in that they evaluated the Communities as new construction using the 2016 CBC and 2019 CBC and the 1991 and 2010 ADA Standards. As all the reviewed Communities were built between 1961 and 2007 and assisted living is not specifically classified as a place of public accommodation under Title III of the ADA, none of the standards used by the Plaintiffs' experts may apply to the construction of these facilities—and certainly none of these Communities should have been surveyed as newly-constructed facilities.

49. When, as was the case here, surveys are conducted applying the current new construction standards to older facilities, the result is a skewed representation of the number of issues at the sites and a lack of site-specific remediation options for each condition. All barrier removal recommendations Plaintiffs' experts provide in their reports are based on generic language without recognizing the unique nature of each condition and the consideration and investigation that would be necessary to determine the cost and scope of work for feasible and appropriate modifications.

50. The Plaintiffs' experts also failed to provide federal regulatory, interpretive, or written guidance that these residential facilities would be covered as a place of public accommodation under the ADA—rather, they seem to have assumed that they are. Even if the ADA applied to the Communities, the Plaintiffs' experts' reports did not consider that barrier removal work is only required if it is readily achievable, and they did not apply a readily achievable analysis to their barrier removal

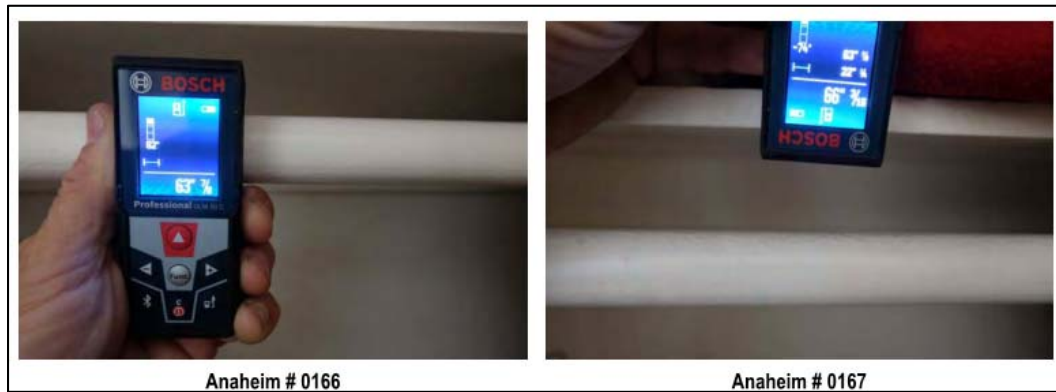
recommendations—nor could they likely have done so due to the many necessary structural and financial considerations, as discussed above. For example, as discussed above, many of Plaintiffs’ experts’ barrier removal recommendations called for enlarging restrooms and other actions that would require moving walls and relocating plumbing, without knowledge about feasibility or cost of such work.

Use of Nontraditional Tools

51. It also appeared that Plaintiffs’ experts used nontraditional survey equipment to find extremely small deviations. For example, a precision tool intended for custom millwork projects such as cutting compound molding angles was used to measure door thresholds. Use of such precision may cause them to call out minute differences that are within construction tolerances and not barriers, and to inflate the number relevant issues beyond those that could properly be considered barriers on the site.



52. As another example, use of an electronic tape measure for determining height of closet rods and coat hooks, as seen in the photos below, or the height of trees or deployed table umbrellas, while suspending the tool over the floor without support can yield inaccurate readings.



Survey and Reporting Errors

53. I also noted problems in Plaintiffs' experts' execution of the surveys, which is reflected in problems in the accuracy of their reports, such as missing photographs of measurements, measurement errors, misleading information, and misinterpretation or application of the codes and standards.

54. Specifically, some of the findings in Plaintiffs' experts' reports do not provide photographs showing the measurement of the alleged barrier so I was unable to verify the issue or see where the measurement was taken. For example, as shown in the excerpt from Plaintiffs' Corona report copied immediately below, the report indicates a bottom landing slope was 3.9%, but no photo of the condition was provided nor description of the location of where the 3.9% measurement was taken. My team's field measurements of the bottom landing in the area where we assumed Plaintiffs' experts were referring did not find a 3.9% measurement. Our readings ranged from 0.4% to 2.4%, which are all under or within construction tolerance for ADA slope measurement requirements. The general acceptable construction tolerance standards for the building industry are documented in a book titled "Handbook of Construction Tolerances" Second Edition by David Kent Ballast. This breaks down several design and construction elements and we believe provides a good overall reference.

From the Plaintiffs' Corona Report:

7	Ramp – Landing Slope	Is the slope of top, bottom and intermediate landings no more than 1:48? (≈ 2.1%)	11B- 405.7.1	11B- 405.7.1	4.3.7	405.7.1	Barrier: The slope of the bottom landing of the lower ramp is 3.9%. Barrier Removal: Remove and replace landing. Photos: 461 thru 477
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Corona # 0467

Photos from LCM Review of Corona Report Show bottom landing slope ranges from 0.4% to 2.4%.





55. We found many incorrect measurements in our review of Plaintiffs' experts' reports such as the toilet compartment at North Euclid pictured below. The Plaintiffs' report listed this as an alleged violation with a width of 57.375". No photo of their measurement was provided, but our measurement showed 59.875"—well within construction tolerance for the ADA 60" ADA requirement for this element.

From the Plaintiffs' North Euclid Report:

150	Toilet Compartment – Clear Width	Is the interior width of the toilet compartment a minimum 60" wide?	11B-604.3.1	11B-604.3.1	4.17.3 and Fig. 30(a).	604.3.1	Barrier: The compartment is not wide enough, measured at 57.375" wide. Barrier Removal: Relocate the partitions. Photos: 430 thru 459
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North Euclid # 0438

Photos from LCM's field review of the North Euclid report.



Photos from LCM's field review of the North Euclid report.

56. Some of the Plaintiffs' findings were misleading about the severity of conditions at different Communities. One example of an overstated issue was at the Scotts Valley Community parking, where the Plaintiffs' report indicated that the slope of the parking space was measured up to 11.5%. This extreme slope measurement was taken in the gutter pan in front of the parking space—

which is not part of the parking space, nor required to be level—instead of on the surface of the parking space, and the photos even show that the Plaintiffs’ surveyor had to hold his foot on the portion of the level in the gutter pan because there was such an extreme difference between the slope of the parking surface and the gutter pan.

From the Plaintiffs’ Scotts Valley Report:

159	Accessible Parking - Slope	Is the slope of the accessible parking spaces and access aisle serving them not more than 1:48 (2.1%) in any direction?	11B-502.4	11B-502.4	4.6.3	502.4	Photos: See aerial photo Barrier: The slope of the accessible parking spaces and access aisle exceeds 1:48, measured up to 11.5%. Barrier Removal: Overlay or replace the paving at the accessible parking spaces and access aisle as required to provide a slope not more than 1:48. I recommend accessible spaces be constructed in concrete. Photos: 4415 thru 4422
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DSCF4431

Scotts Valley gutter pan slope



DSCF4429

DSCF4430

Scotts Valley gutter pan slope

57. One of the challenges in reviewing the Plaintiffs’ reports in the field was that often the report would state that a unit was similar to a previously surveyed unit. Quite often, however, the issues that Plaintiffs’ experts listed as similar in other units were not found in all of the units that they referenced. For example, at the Auburn property, the Plaintiffs’ expert claimed that unit 120 was similar

1 to unit 311 “except where noted”. However, I found that unit 120 was a unit with accessible features
 2 whereas unit 311 was a standard unit with no accessibility features—yet the Plaintiffs’ experts noted no
 3 differences between the units on their report, and the two units were in no way similar. This is a
 4 significant oversight. The differences between those two units are clearly seen in the photos below.

5 Unit 311 – Kitchenette photos from Plaintiffs’ expert:



14 Unit 120 – Kitchenette photos that I took shows that Unit 120 is not similar to Unit 311:



22 Unit 311 – Bathroom photos from Plaintiffs’ expert:



Unit 120 – Bathroom photos that I took shows that Unit 120 is not similar to Unit 311:



Unit 120 – Bathroom photos that I took shows that Unit 120 is not similar to Unit 311.

58. Other issues with the Plaintiffs’ reports included misinterpretation or misapplication of the codes and/or standards. One of the issues the reports listed as “common” relates to the accessibility of handles or controls. The accessibility codes and standards require operable controls to be usable without tight grasping, pinching, or twisting of the wrist. This is known as a performance standard as opposed to a technical standard because there is no objective way to measure for this characteristic. Some surveyors use a “closed fist test” to see if a control meets these performance requirements. While this test may be one method for trying to determine performance, it is not the technical standard, and should not be relied upon as the exclusive methodology for the usability of a control by someone with limited mobility or strength in their hands. The standard precludes tight grasping, pinching, or twisting of the wrist. For example, while the refrigerator handle space in the photographs below may not be large enough for a closed fist, it does not require a tight grasp, pinch, or twist to operate, and thus would not violate the accessibility standard.



DSCF7508



DSCF7507

Photo showing refrigerator handle space does not require a tight grasp, pinch, or twist to operate.

59. Another issue plaintiffs raised that was misleading relates to the application of roll-in shower standards to modified bathtubs. A modification we found that a Community may have made at a resident’s request is lowering or removing a sidewall of a bathtub to make it easier for a user to transfer their feet and legs into the basin of the tub when using a tub seat or chair. Plaintiffs’ experts always erroneously identified these tub modifications as roll-in showers with inaccessible layouts.

Chatsworth Cut Wall Tubs:



Ocean House Cut Wall Tubs:



60. Because the Plaintiffs' experts failed to follow the steps necessary to perform the surveys in the Communities according to accepted methodology, we don't have reliable information as to whether each element they pointed out is compliant or not with any applicable standards. This is especially impactful because Plaintiffs raise different issues regarding each Community and each room in each Community and because every Community is different in site layout, unit layouts, common areas, and more.

61. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury the foregoing is true and correct.

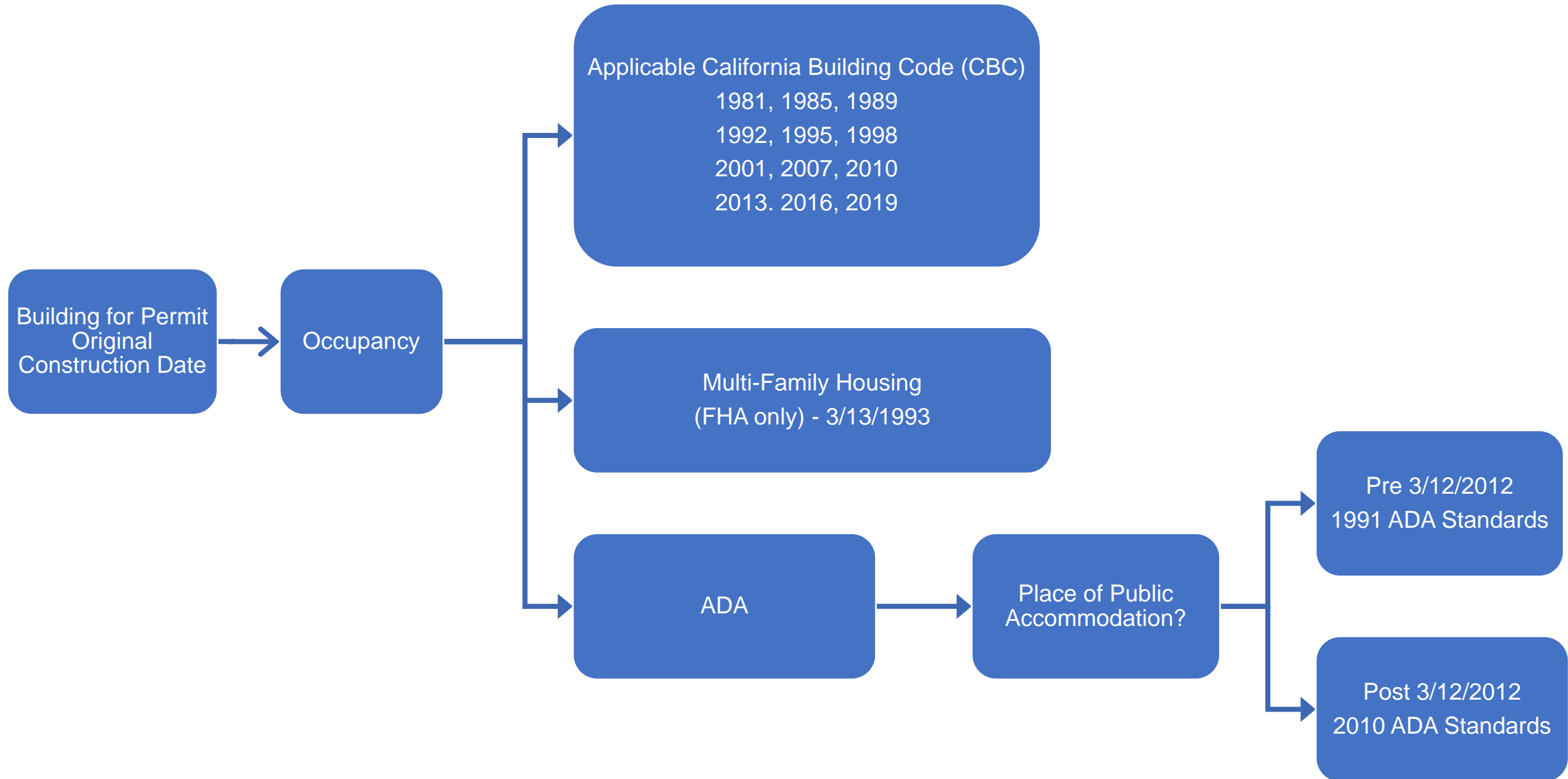
Executed this 3rd day of March 2022, in Charlotte Amalie, St. Thomas.



Douglas J. Anderson

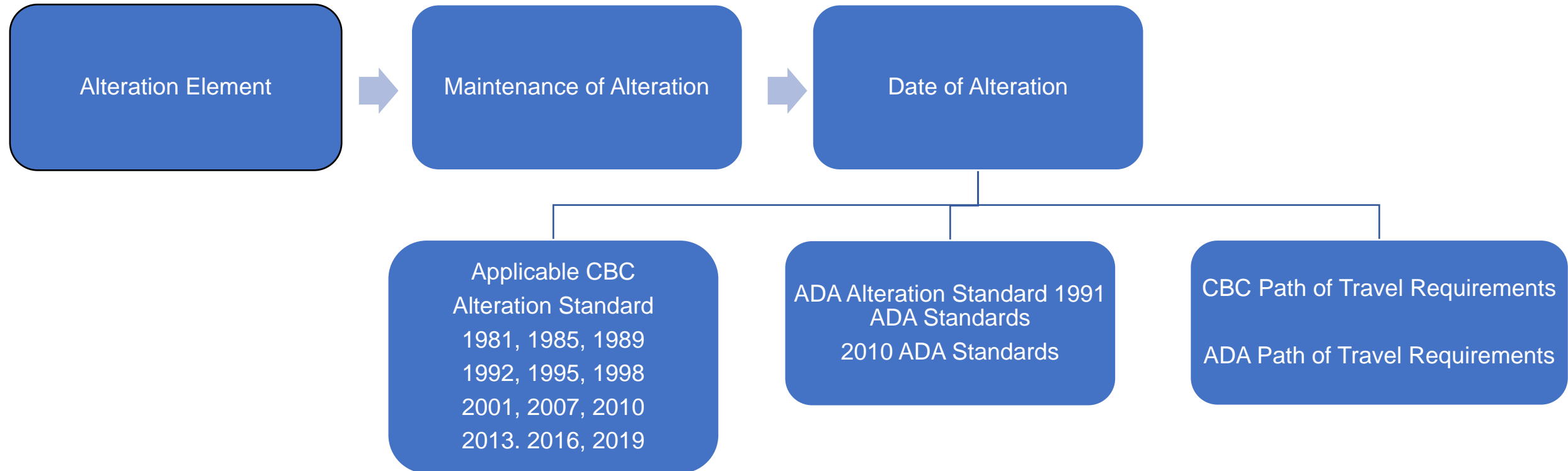
Step 1

Exhibit 1



Step 2

Exhibit 4



Step 3

Exhibit 5

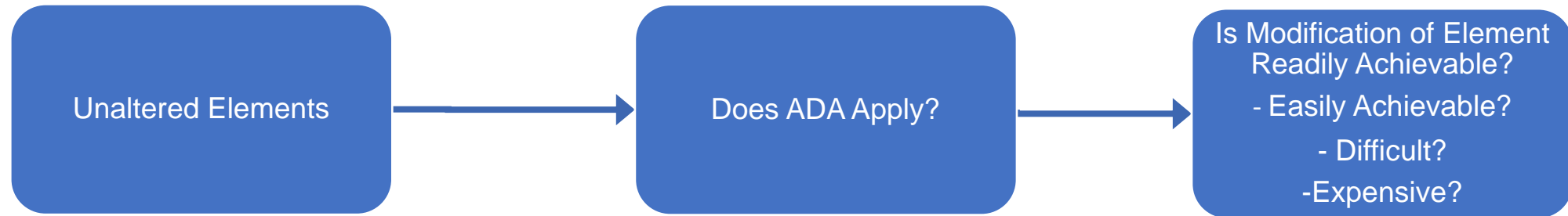


Exhibit 2

Fair Housing Act Design and Construction Safe Harbor Standards

1. HUD Fair Housing Accessibility Guidelines and the Supplemental Notice
2. ANSI A117.1 (1986), used with the Fair Housing Act, HUD's regulations, and the Guidelines
3. CABO/ANSI A117.1 (1992) used with the Fair Housing Act, HUD's regulations, and the Guidelines
4. ICC/ANSI A117.1 (1998) used with the Fair Housing Act, HUD's regulations, and the Guidelines
5. The Fair Housing Act Design Manual (1998)
6. Code Requirements for Housing Accessibility 2000 (ICC/CRHA)
7. International Building Code 2000 with 2001 Supplement
8. International Building Code 2003, with one condition
9. ICC/ANSI A117.1 (2003) used with the Fair Housing Act, HUD's regulations, and the Guidelines
10. International Building Code 2006, with the January 31, 2007 Errata
11. ICC/ANSI A117.1 (2009) used with the Fair Housing Act, HUD's regulations, and the Guidelines
12. International Building Code 2009
13. International Building Code 2012
14. International Building Code 2015
15. International Building Code 2018

[illegible]

[illegible]

2002	2003	2004	2005	2006	2007	2008	2009	2010
<div>2001 Edition of Title 24 Effective November 1,2002 Based on 1997 UBC</div>						<div>2007 Edition of Title 24 Effective January 1,2008 Based on 2006 IBC</div>		
				Cortona Park				

Exhibit 6**Brookdale Loma Linda****First Floor Plan**

Exhibit 6

Brookdale Irvine

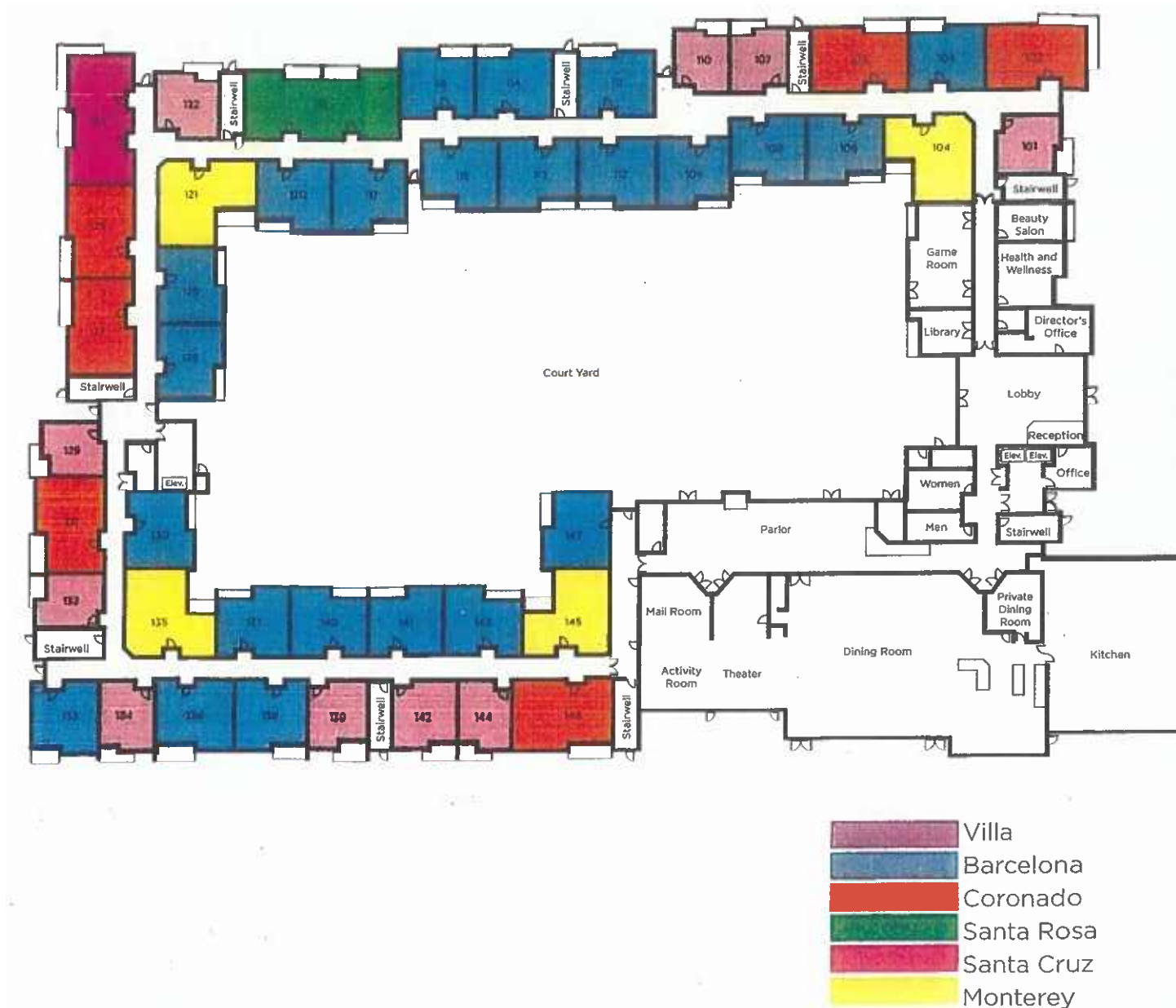


Exhibit 6**Brookdale Clairemont**

Clairemont

1st Floor

Evacuation Routes

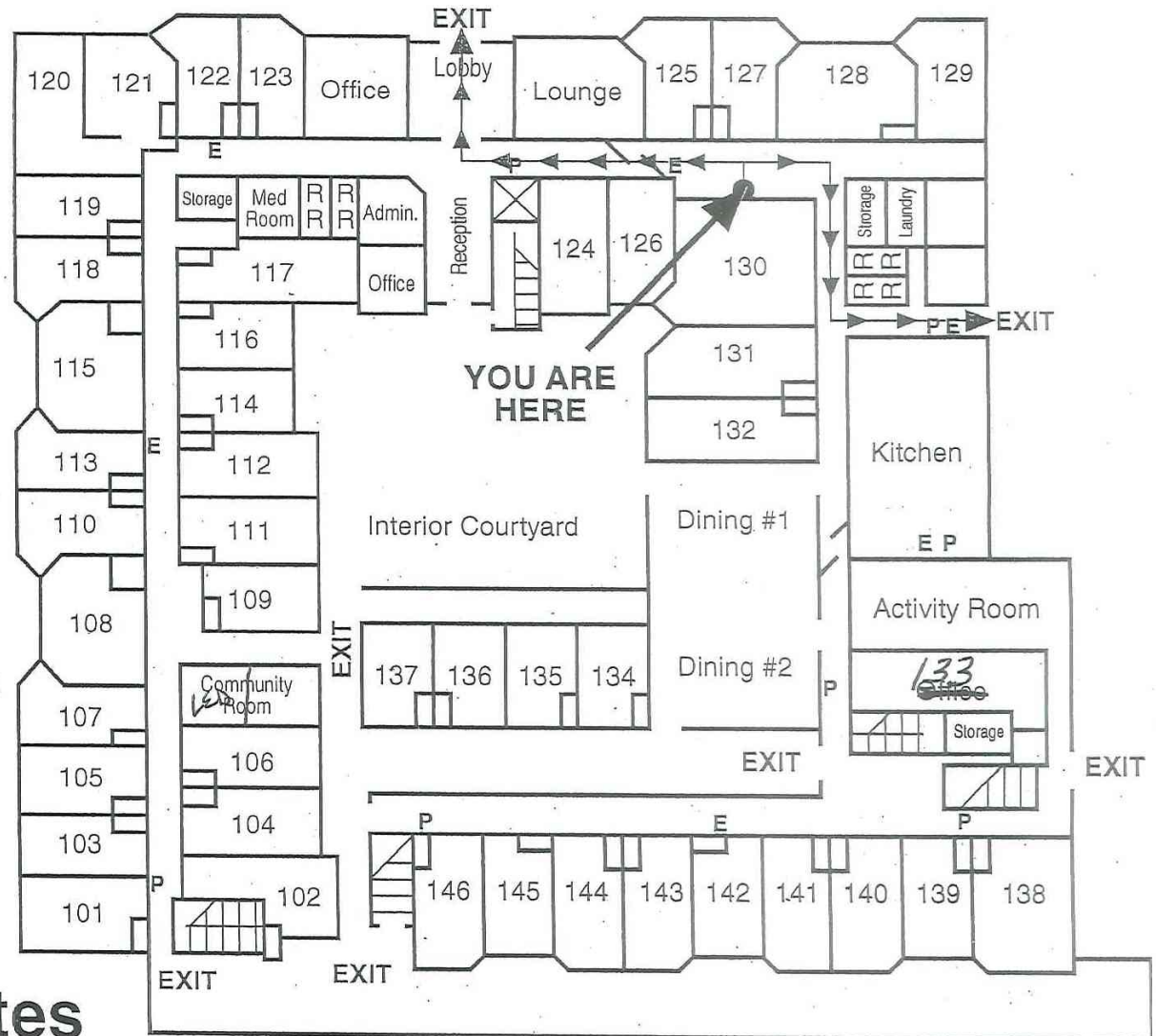


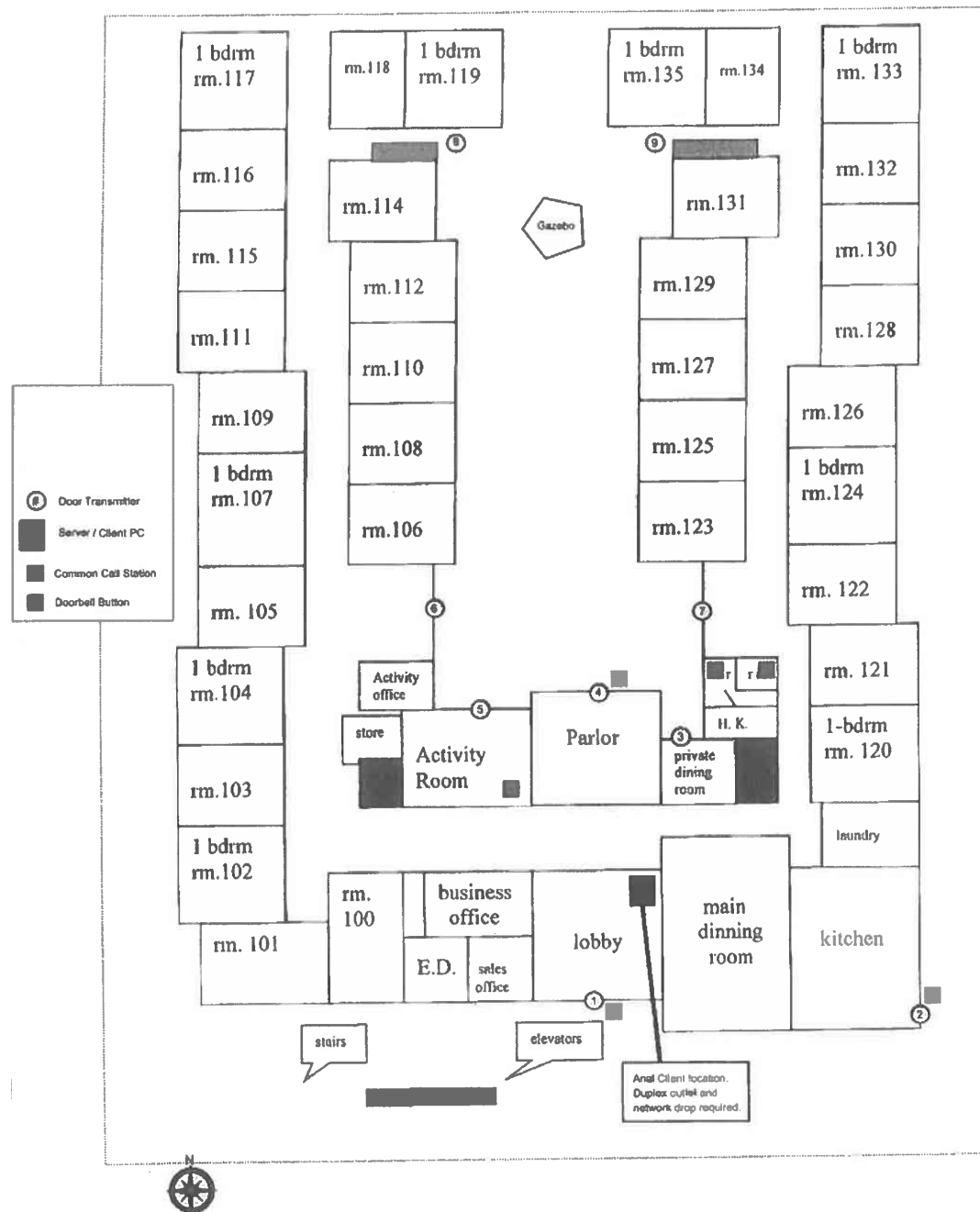
Exhibit 6**Brookdale Murrietta**

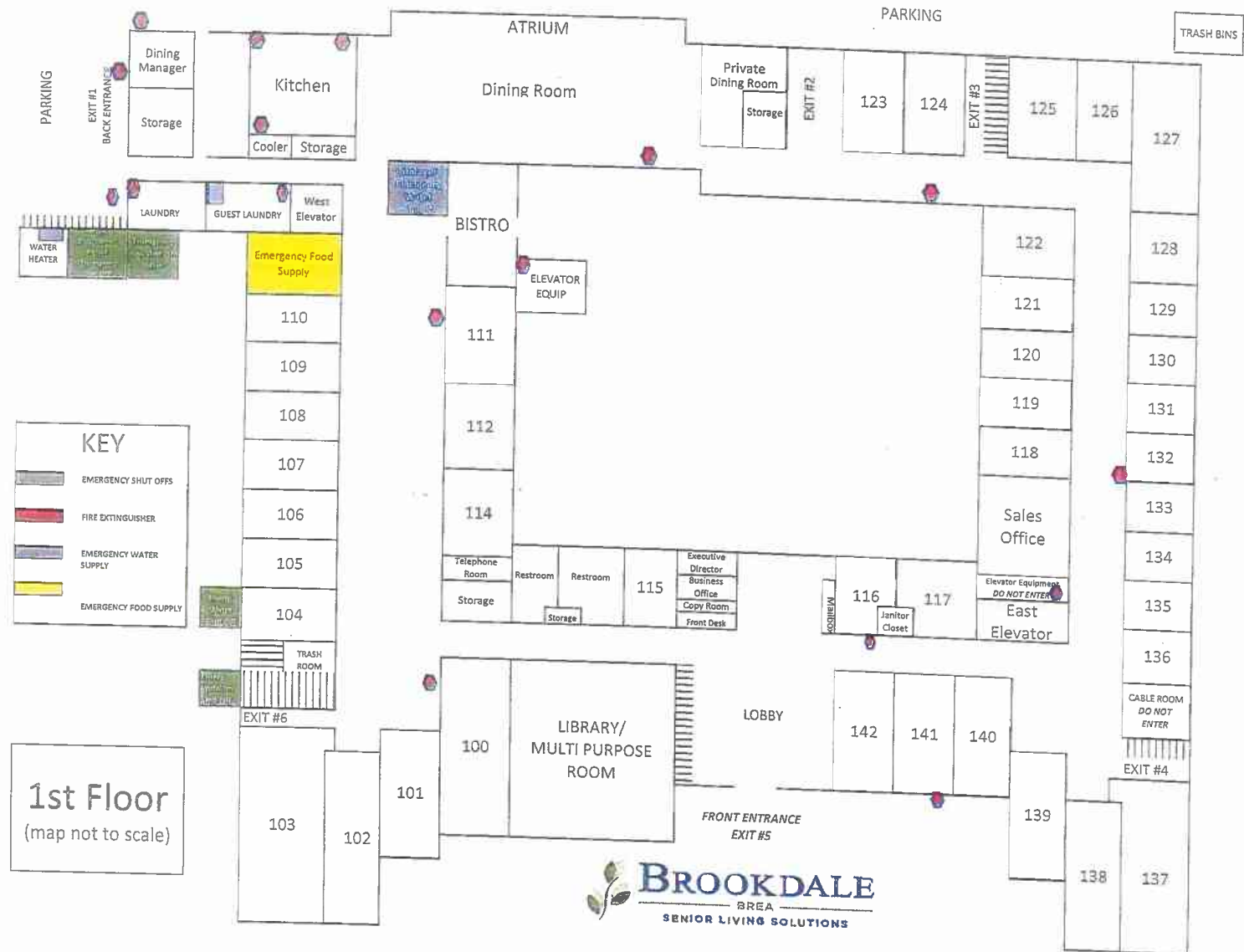
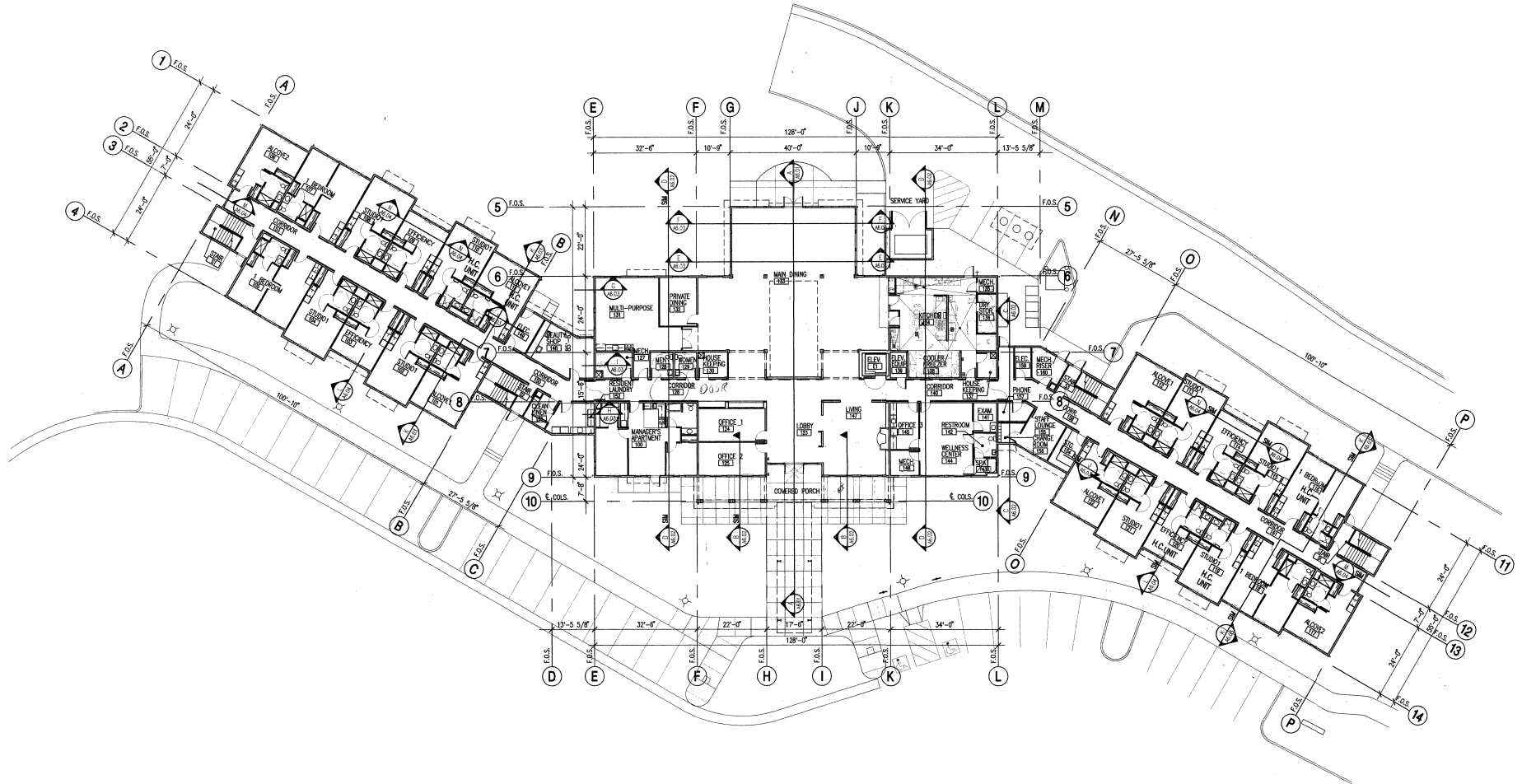
Exhibit 6**Brookdale Brea**

Exhibit 6

Brookdale Auburn



This architectural floor plan illustrates a multi-unit residential building layout. The plan is oriented with a North arrow pointing towards the top right. The building is divided into several units, including Unit A, Unit B, Unit C, and Unit D. Each unit is equipped with a bathroom, a bedroom, and a living area. A central corridor provides access to all units. A laundry room and a storage area are also shown. The plan is annotated with dimensions, room names, and a north arrow.

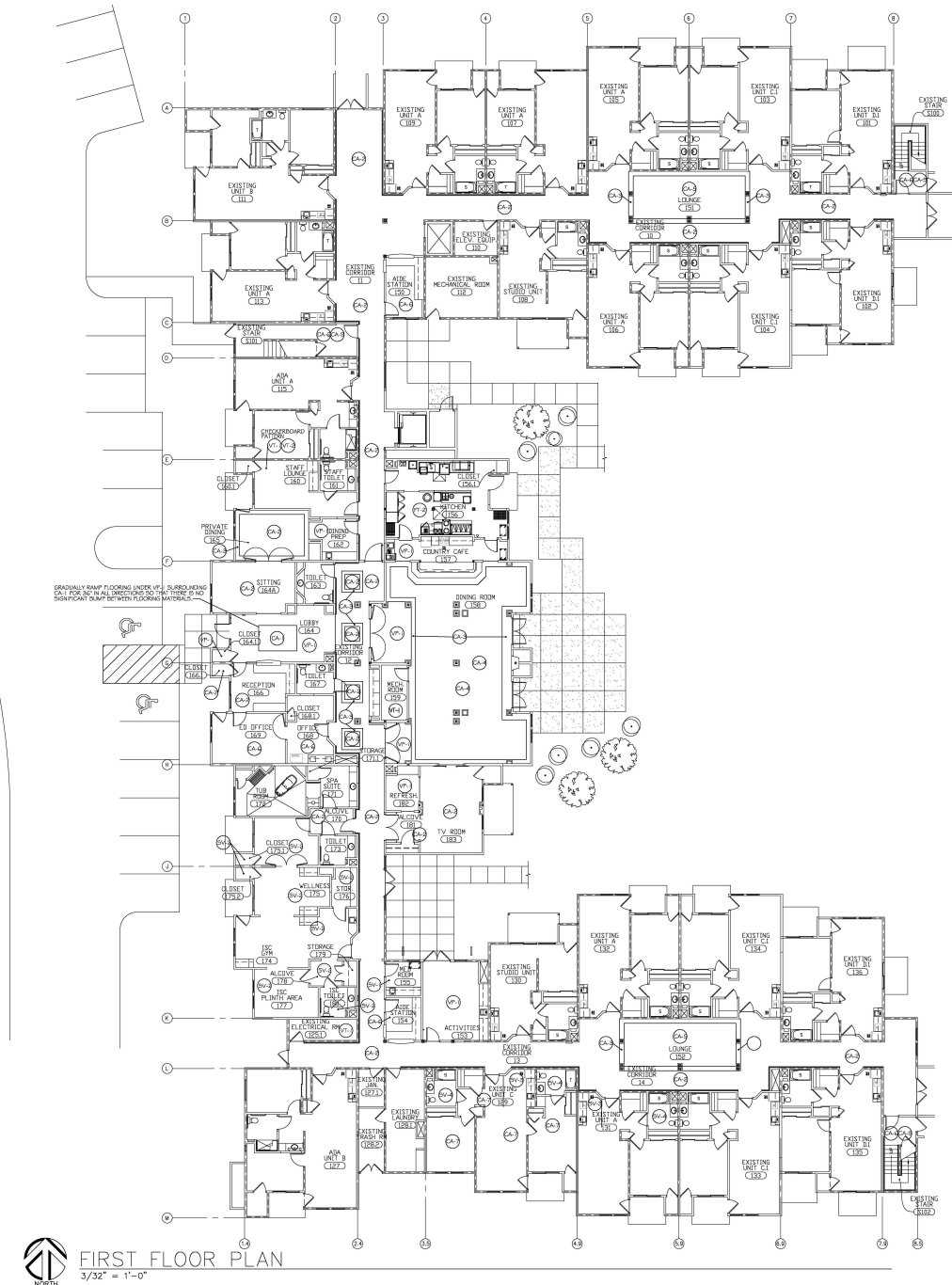
Exhibit 6**Brookdale Paulin Creek**

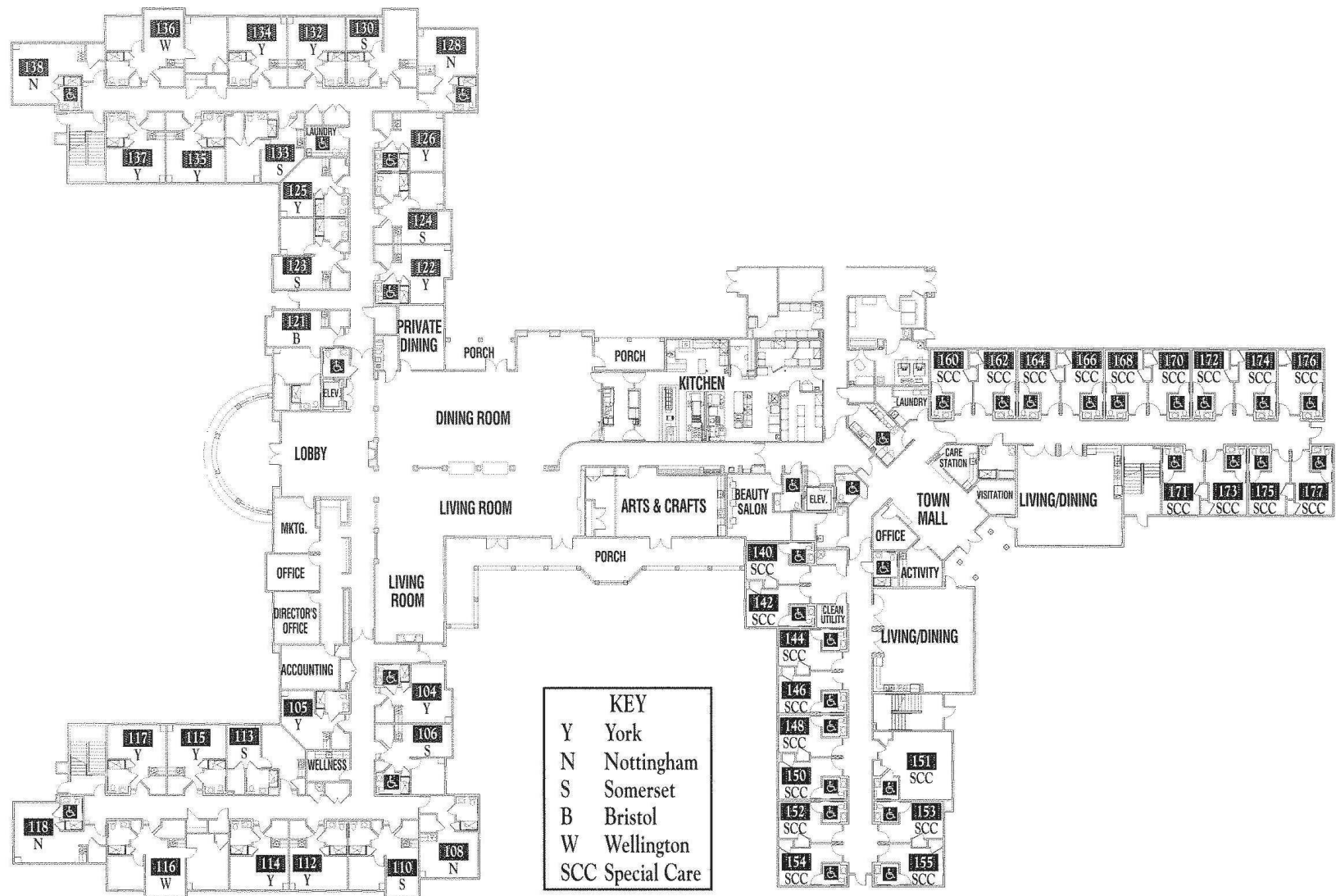
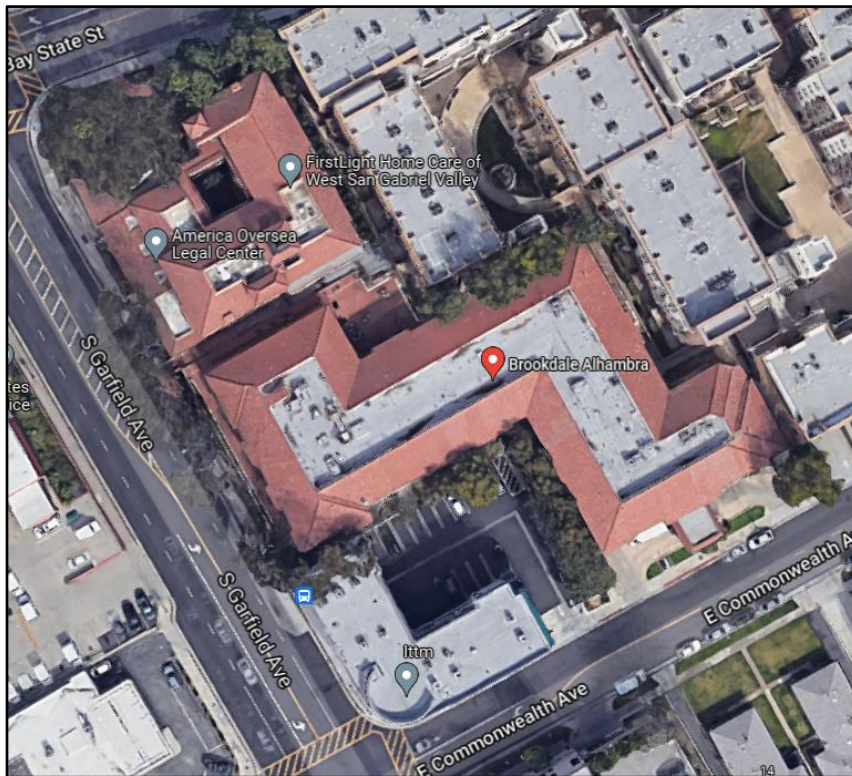
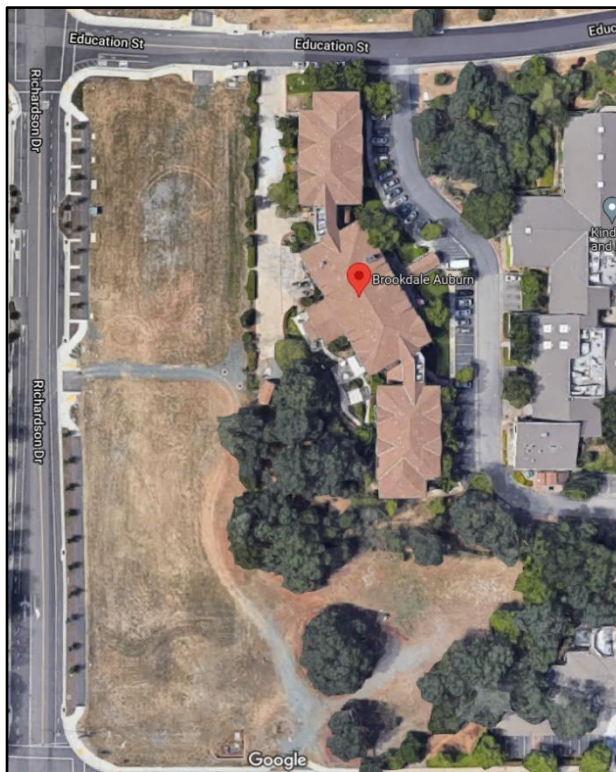
Exhibit 6**Brookdale Northridge**

Exhibit 7



Brookdale Alhambra

1 E Commonwealth
Alhambra, CA 91801



Brookdale Auburn

11550 Education St
Auburn, CA 95602

Exhibit 7


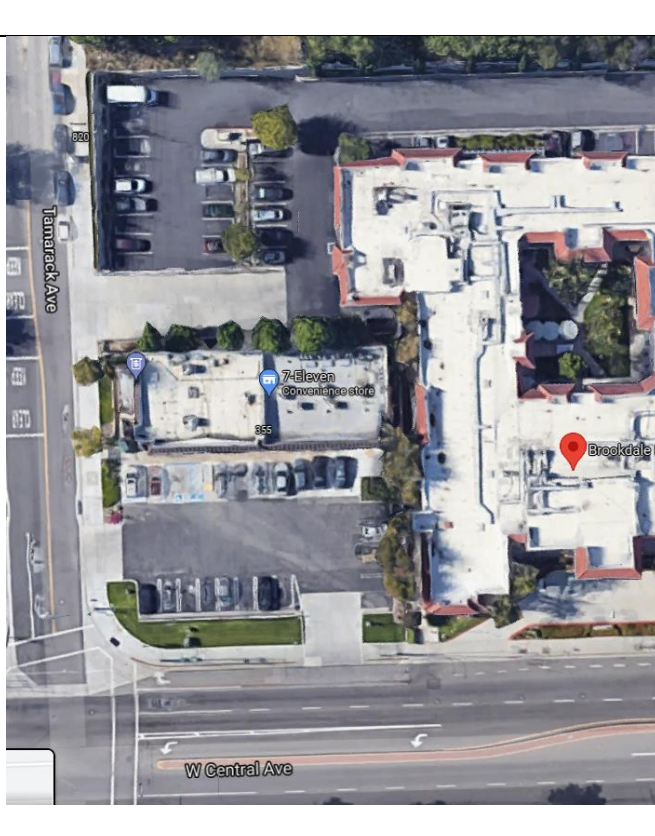
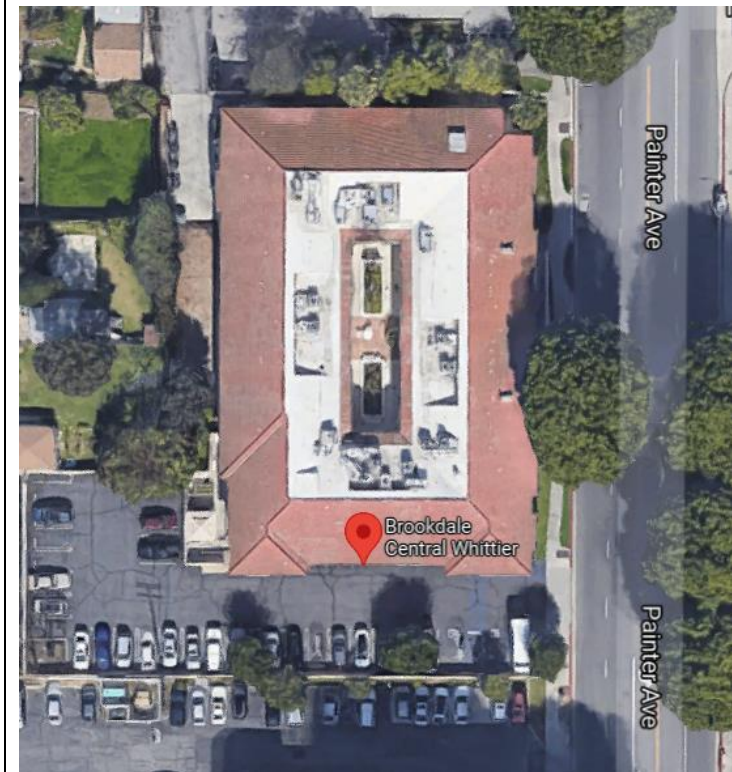
 An aerial photograph of the Brookdale Anaheim facility. The building is a large, multi-story structure with a light-colored roof and walls. It is surrounded by a parking lot filled with cars. To the left of the building is a street labeled "Dale St". A red location pin is placed on the building, with a label "Brookdale Anaheim" and "200 N Dale Ave, Anaheim, CA 92801".	<p><u>Brookdale Anaheim</u></p> <p>200 North Dale Ave Anaheim, CA 92801</p>
 An aerial photograph of the Brookdale Brea facility. The building is a large, multi-story structure with a light-colored roof and walls. It is surrounded by a parking lot filled with cars. To the left of the building is a street labeled "Tamarack Ave". To the right of the building is a street labeled "W Central Ave". A red location pin is placed on the building, with a label "Brookdale Brea". Other labels visible include "7-Eleven Convenience store", "U.S. Bank", and "ATM (U.S. Bank)".	<p><u>Brookdale Brea</u></p> <p>285 West Central Ave Brea, CA 92821</p>

Exhibit 7



Brookdale Brookhurst

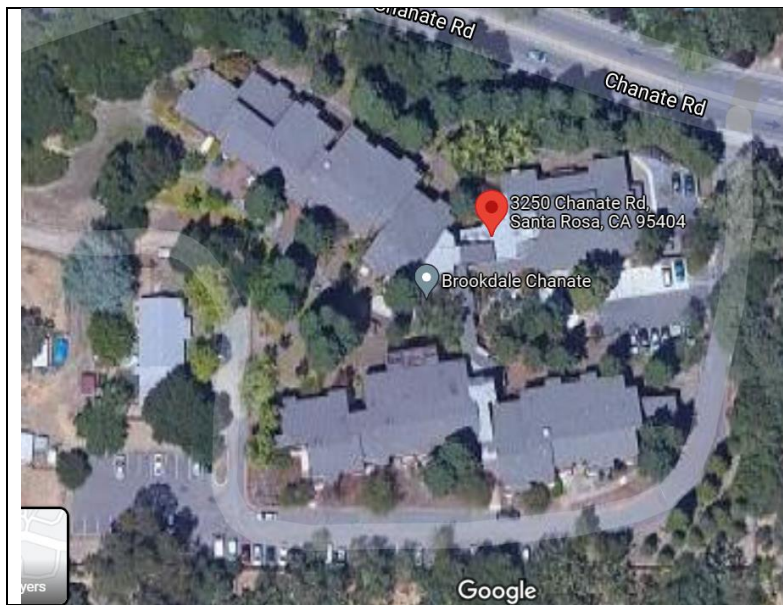
15302 Brookhurst St
Westminster, CA 92683



Brookdale Central Whittier

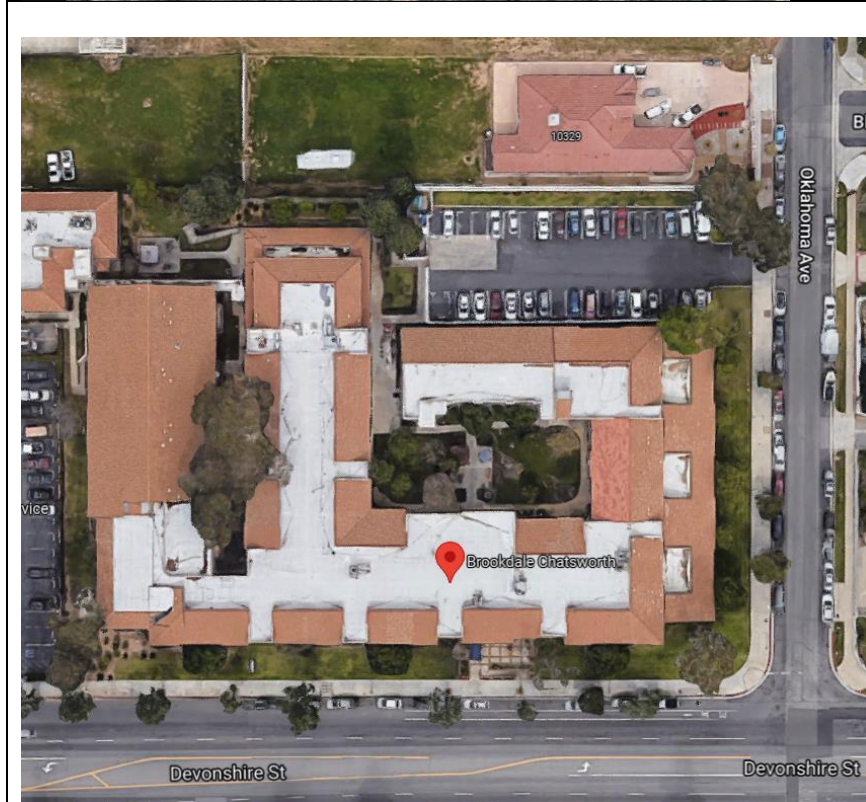
8101 Painter Ave
Whittier, CA 90602

Exhibit 7



Brookdale Chanate

3250 Chanate Rd
Santa Rosa, CA 95404



Brookdale Chatsworth

20801 Devonshire St
Chatsworth, CA 91311

Exhibit 7


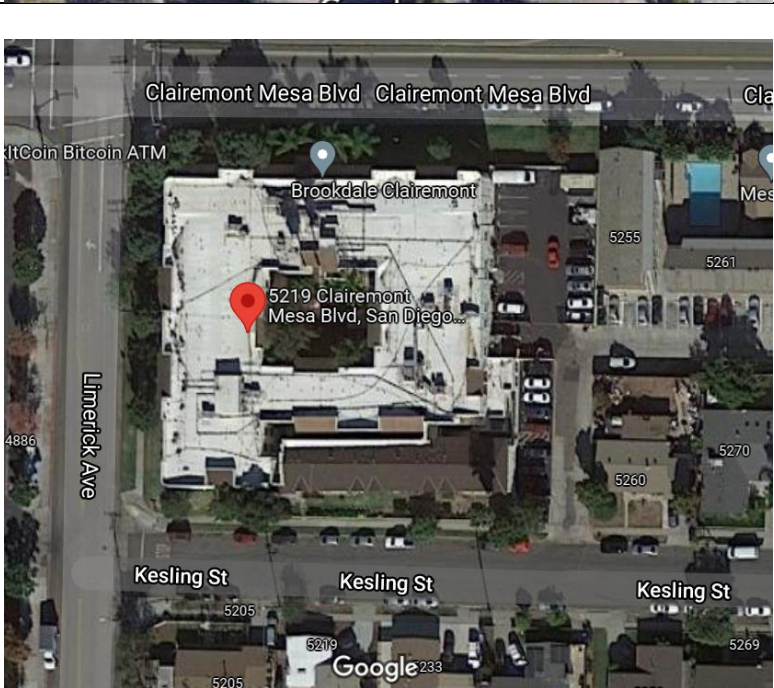
	<p><u>Brookdale Citrus Heights</u></p> <p>7375 Stock Ranch Rd Citrus Heights, CA 95621</p>
	<p><u>Brookdale Clairemont</u></p> <p>5219 Clairemont Mesa Blvd San Diego, CA 92117</p>

Exhibit 7

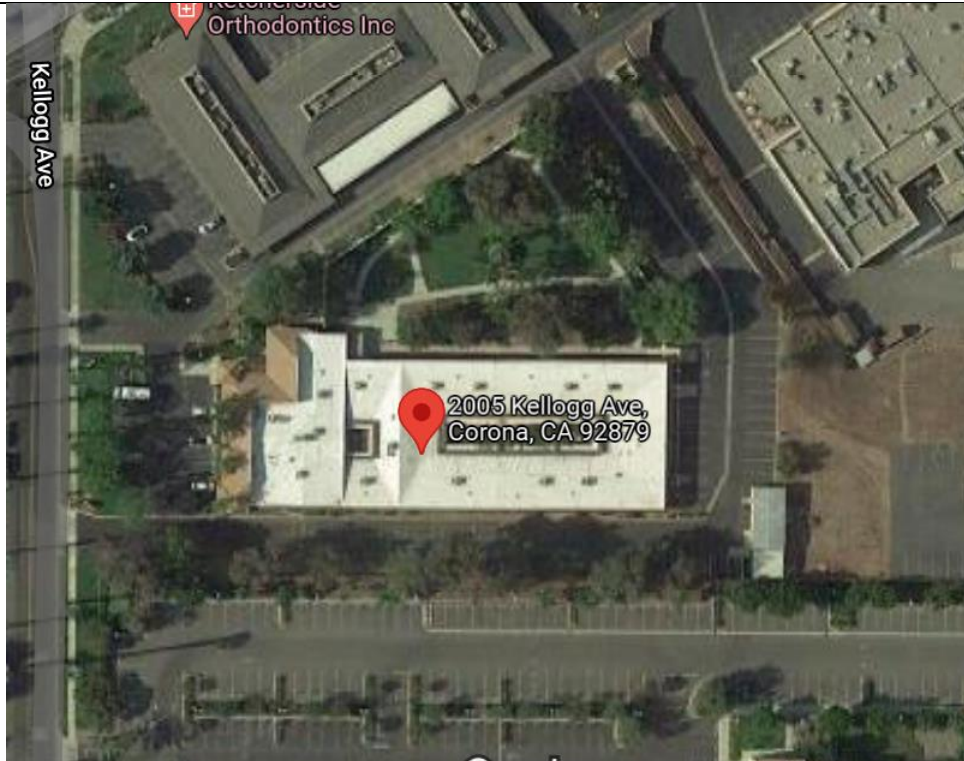
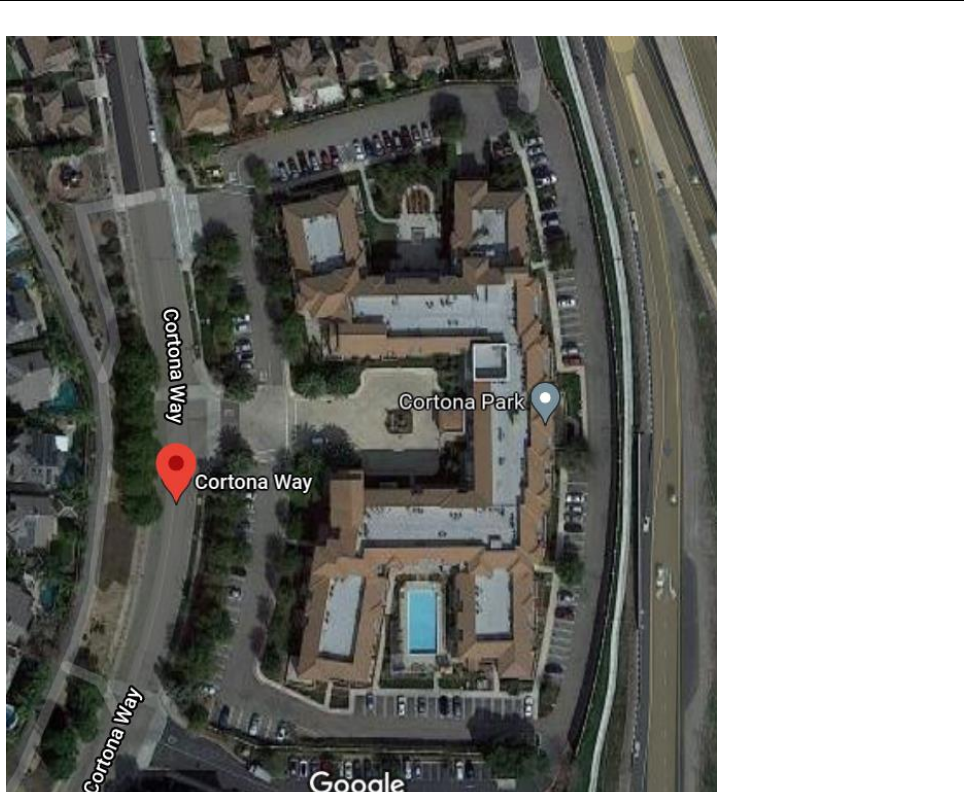
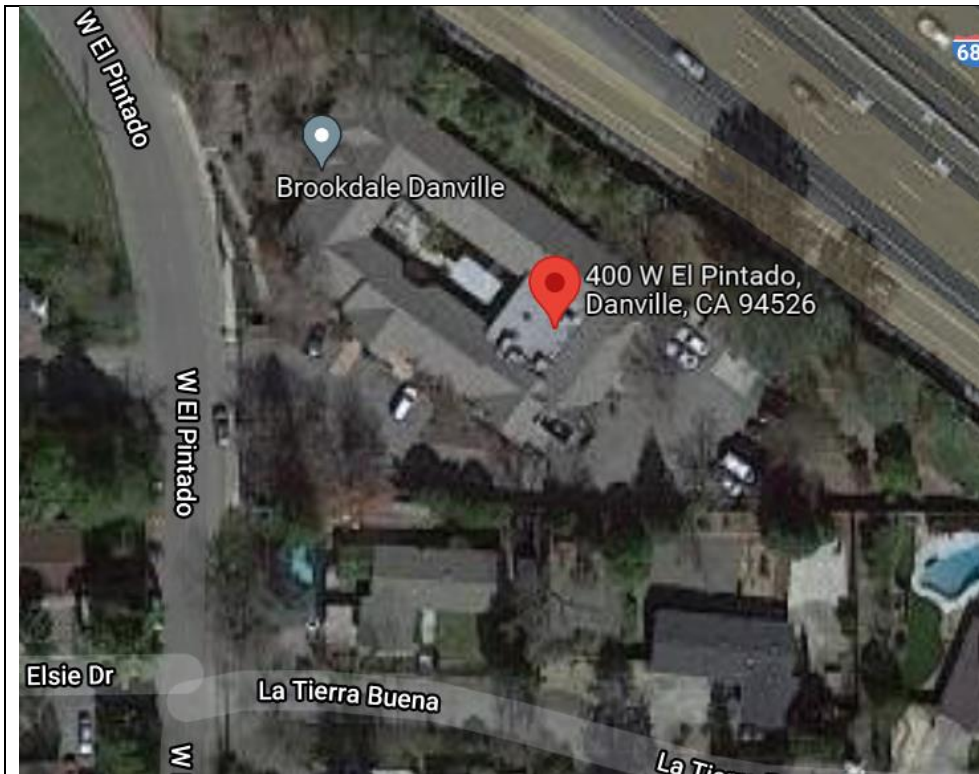
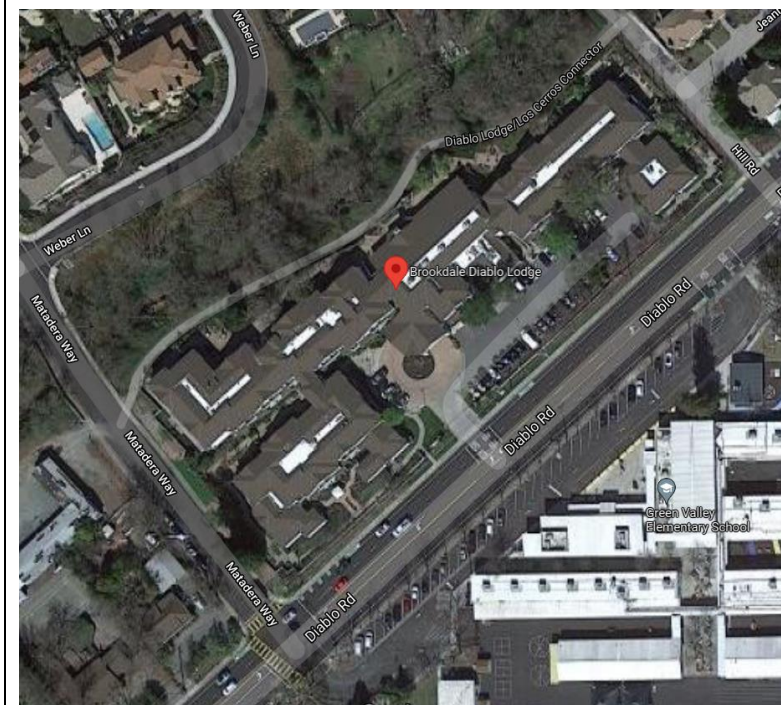
 An aerial photograph of a large, multi-story white building with a flat roof, identified as Brookdale Corona. The building is situated on Kellogg Ave. in Corona, CA. A red location pin is placed on the building with the text "2005 Kellogg Ave, Corona, CA 92879". To the left, another building is labeled "Orthodontics Inc". The surrounding area includes parking lots, trees, and other commercial buildings. The Google logo is visible at the bottom.	<p><u>Brookdale Corona</u></p> <p>2005 Kellogg Ave Corona, CA 92879</p>
 An aerial photograph of a large, multi-story building with a brown roof, identified as Cortona Park. The building is situated on Cortona Way in Brentwood, CA. A red location pin is placed on the building with the text "Cortona Way". A blue location pin is also visible on the building with the text "Cortona Park". The surrounding area includes parking lots, trees, and other residential buildings. The Google logo is visible at the bottom.	<p><u>Cortona Park</u></p> <p>150 Cortona Way Brentwood, CA 94513</p>

Exhibit 7



Brookdale Danville

400 West El Pintado Blvd
Danville, CA 94526



Brookdale Diablo Lodge

950 Diablo Rd
Danville, CA 94526

Exhibit 7



	<p><u>Brookdale Folsom</u></p> <p>780 Harrington Way Folsom, CA 95630</p>
	<p><u>Fountaingrove</u></p> <p>300 Fountaingrove Parkway Santa Rosa, CA 95403</p>

Exhibit 7

	<p><u>Brookdale Garden Grove</u></p> <p>10200 Chapman Ave Garden Grove, CA 92840</p>
	<p><u>Brookdale Gardens of Tarzana</u></p> <p>18700 Burbank Blvd Tarzana, CA 91356</p>

Exhibit 7

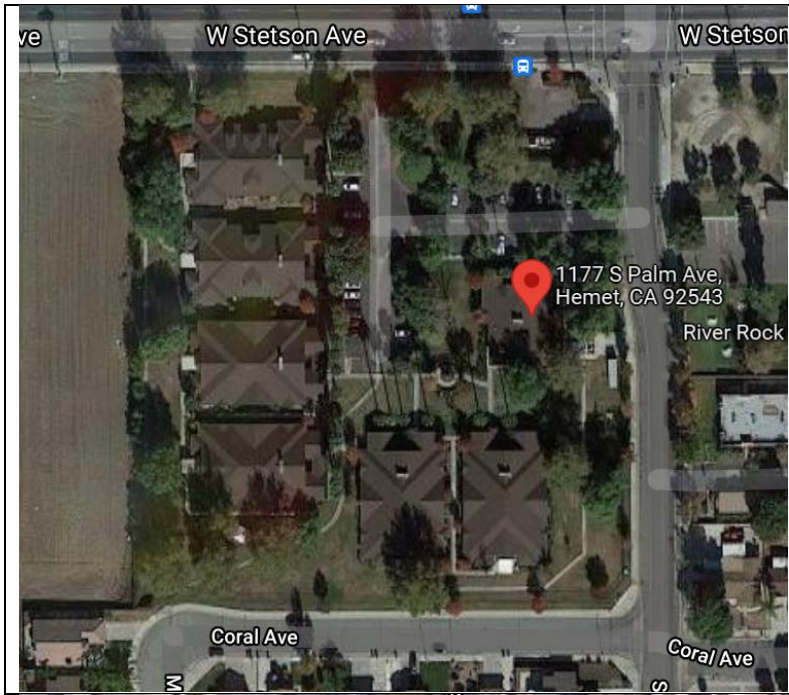

	<p><u>Hemet</u></p> <p>1177 South Palm Ave Hemet, CA 92543</p>
	<p><u>Brookdale Irvine</u></p> <p>10 Marquette Irvine, CA 92612</p>

Exhibit 7


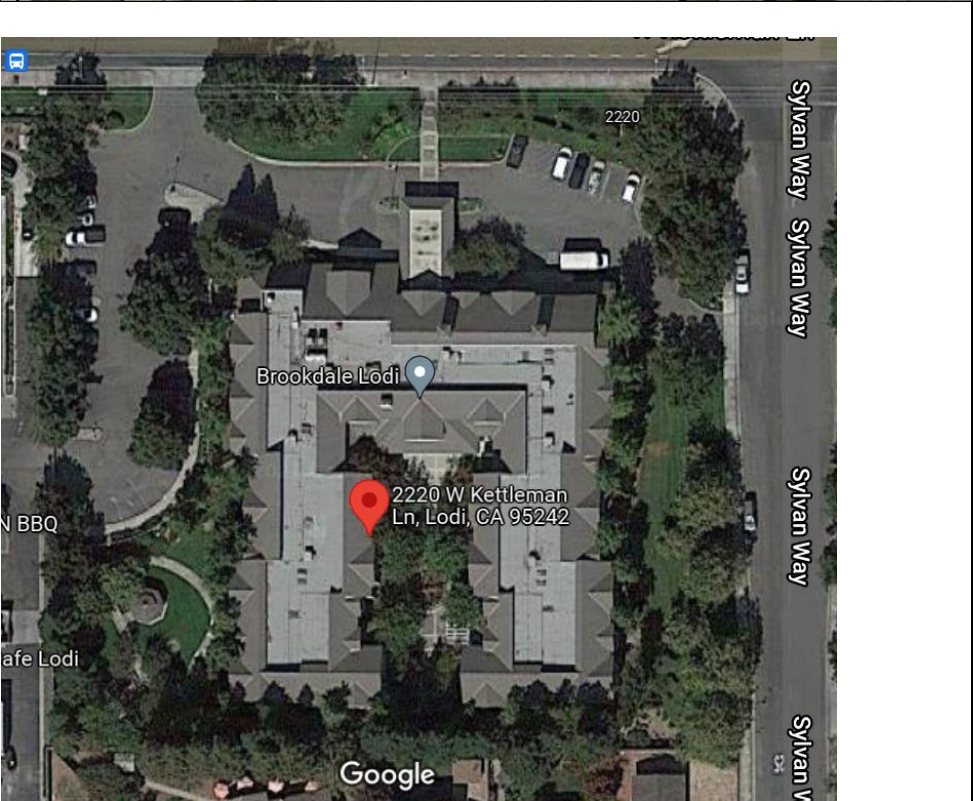
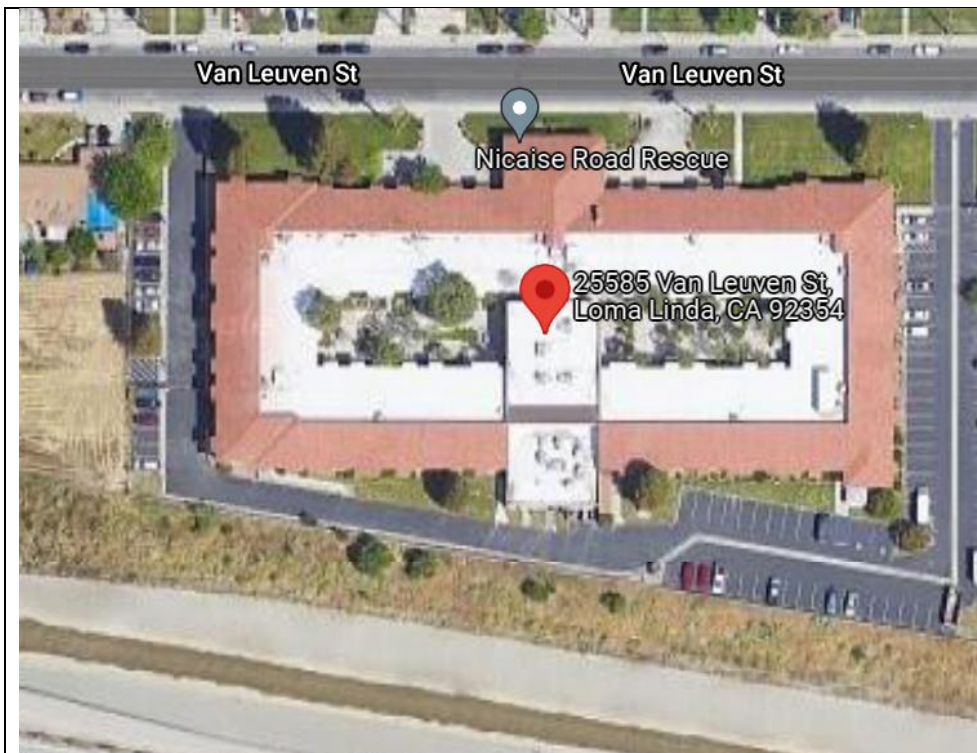
	<p><u>Brookdale Kettleman Lane</u></p> <p>2150 West Kettleman Lane Lodi, CA 95242</p>
	<p><u>Brookdale Lodi</u></p> <p>2220 West Kettleman Lane Lodi, CA 95242</p>

Exhibit 7



Brookdale Loma Linda

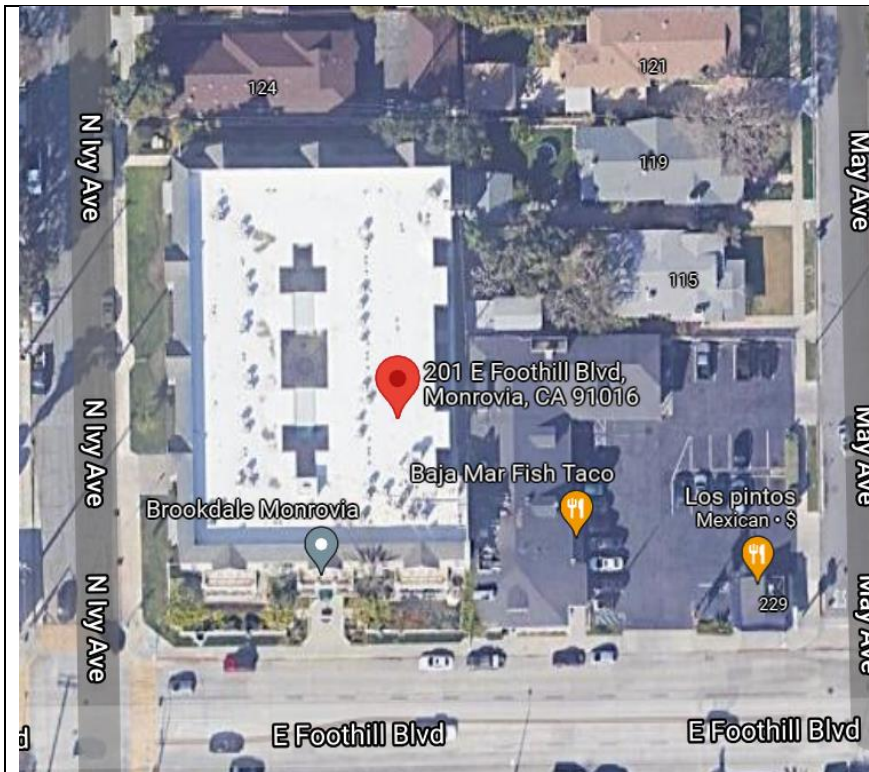
25585 Van Leuven St
Loma Linda, CA 92354



Brookdale Mirage Inn

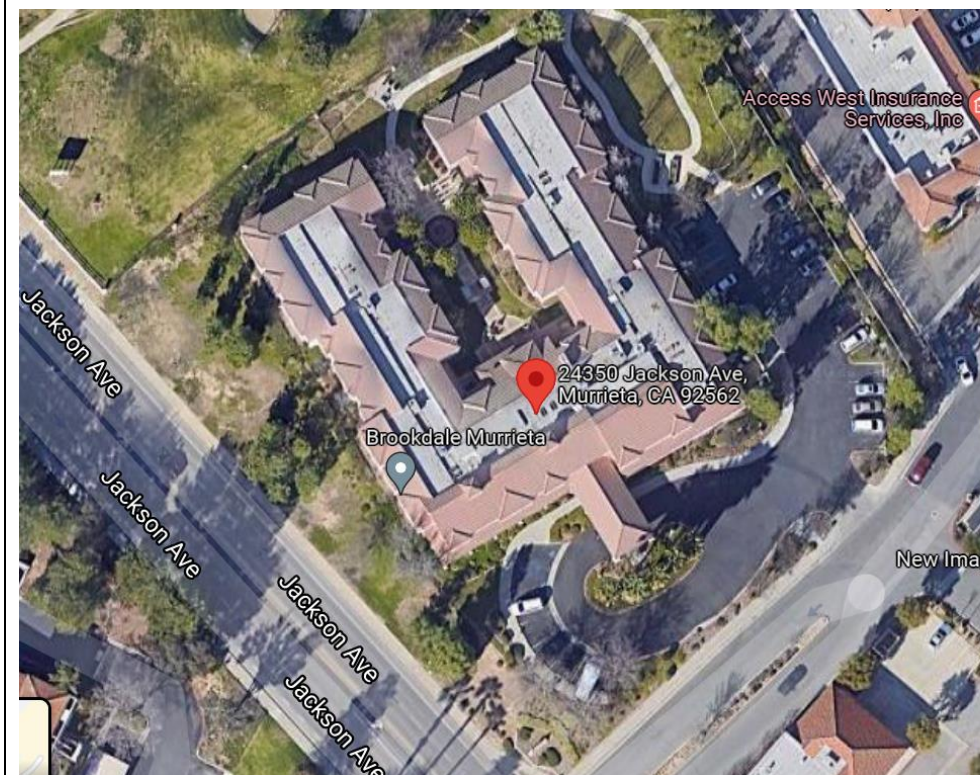
72750 Country Club Drive
Rancho Mirage, CA 92270

Exhibit 7



Brookdale Monrovia

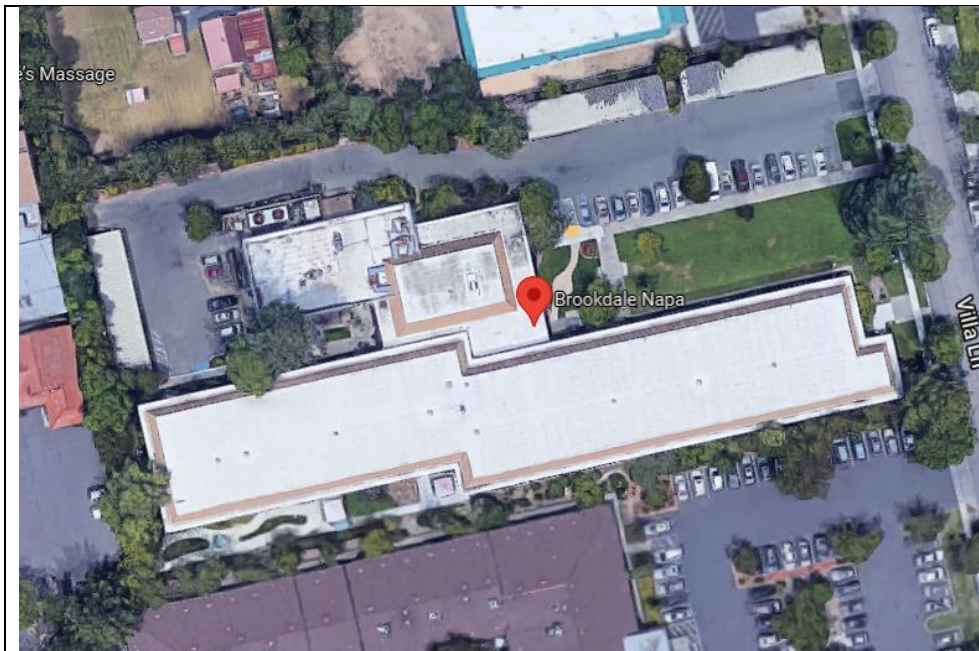
201 East Foothill Blvd
Monrovia, CA 91016



Brookdale Murrieta

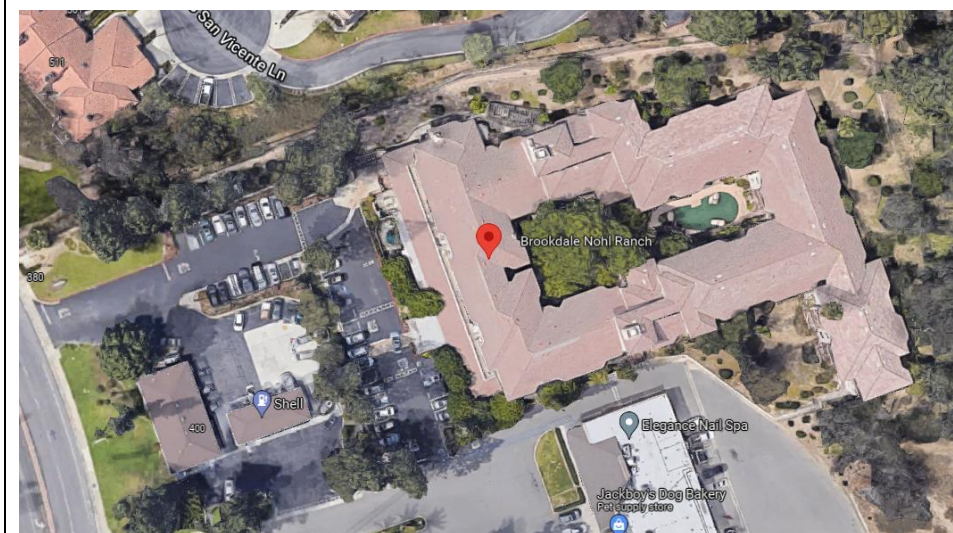
24350 Jackson Ave
Murrieta, CA 92562

Exhibit 7



Brookdale Napa

3255 Villa Lane
Napa, CA 94558



Brookdale Nohl Ranch

380 South Anaheim Hills Rd
Anaheim Hills, CA 92807

Exhibit 7


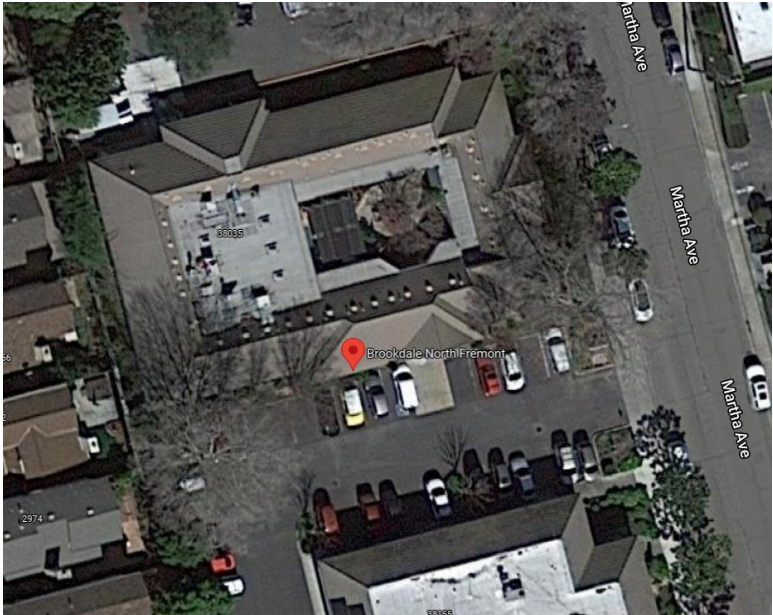
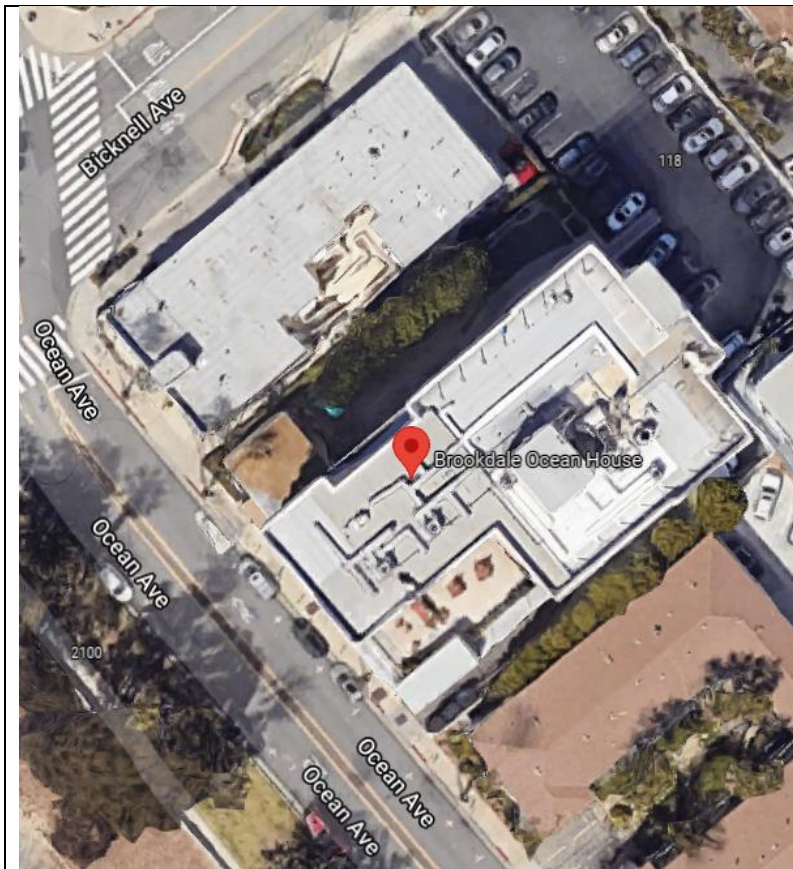
 An aerial photograph showing a large, multi-story white building with a flat roof, identified as Brookdale North Euclid. A red location pin is placed on the building. Surrounding the building are other residential structures, trees, and a street.	<p><u>Brookdale North Euclid</u></p> <p>1031 North Euclid Ave Ontario, CA 91762</p>
 An aerial photograph showing a large, multi-story building with a dark roof, identified as Brookdale North Fremont. A red location pin is placed on the building. The building is surrounded by a parking lot with several cars, trees, and a street labeled Martha Ave.	<p><u>Brookdale North Fremont</u></p> <p>38035 Martha Ave Fremont, CA 94536</p>

Exhibit 7

	<p><u>Brookdale North Tarzana</u></p> <p>5711 Reseda Blvd Tarzana, CA 91356</p>
	<p><u>Brookdale Northridge</u></p> <p>17650 Devonshire St Northridge, CA 91325</p>

Exhibit 7



Brookdale Ocean House

2107 Ocean Ave
Santa Monica, CA 90405



Brookdale Oceanside

3524 Lake Blvd
Oceanside, CA 92056

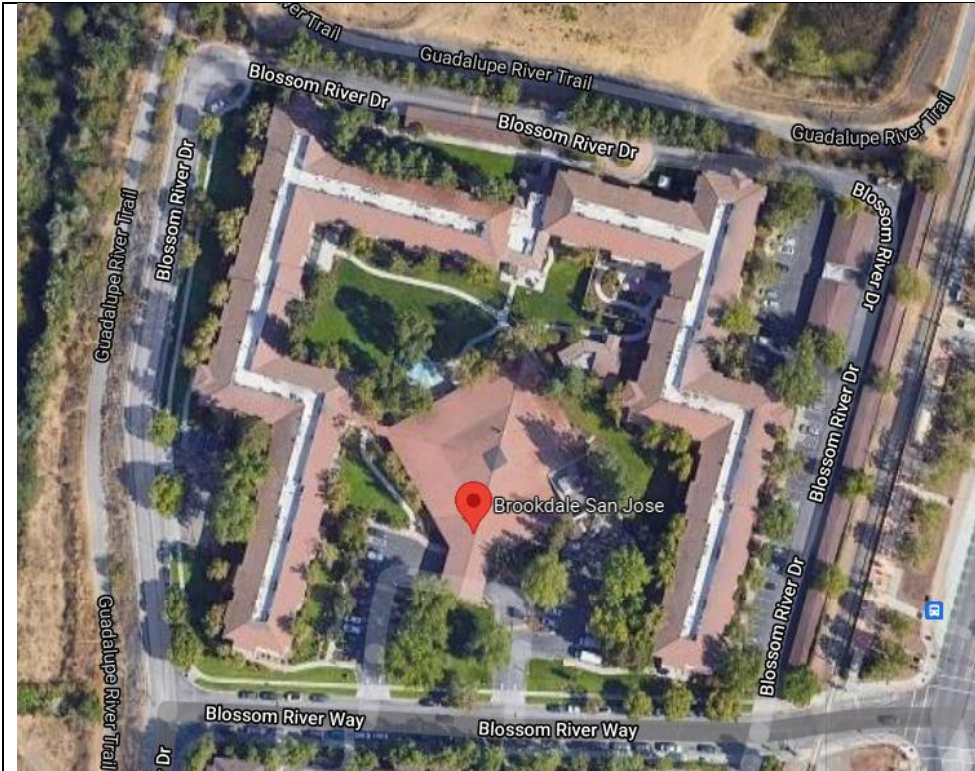
Exhibit 7

 An aerial photograph of the Brookdale Paulin Creek facility. The complex consists of several large, interconnected buildings with reddish-brown roofs, surrounded by greenery and parking areas. A red location pin is placed on one of the buildings. The facility is bordered by Santa Rosa Creek to the north, Range Ave to the east, and Hardies Ln to the west.	<p><u>Brookdale Paulin Creek</u></p> <p>2375 Range Ave Santa Rosa, CA 95403</p>
 An aerial photograph of the Brookdale Redwood City facility. The complex features large buildings with red roofs, surrounded by trees and parking lots. A red location pin is placed on one of the buildings. The facility is located near Woodside Rd to the west, Cypress St to the north, and Center St to the east. Other nearby locations marked include Poseidon Pool Service and Retail Store, OnTrac Drop Box, and Learn The Dental Handpiece Repair.	<p><u>Brookdale Redwood City</u></p> <p>485 Woodside Rd Redwood City, CA 94061</p>

Exhibit 7

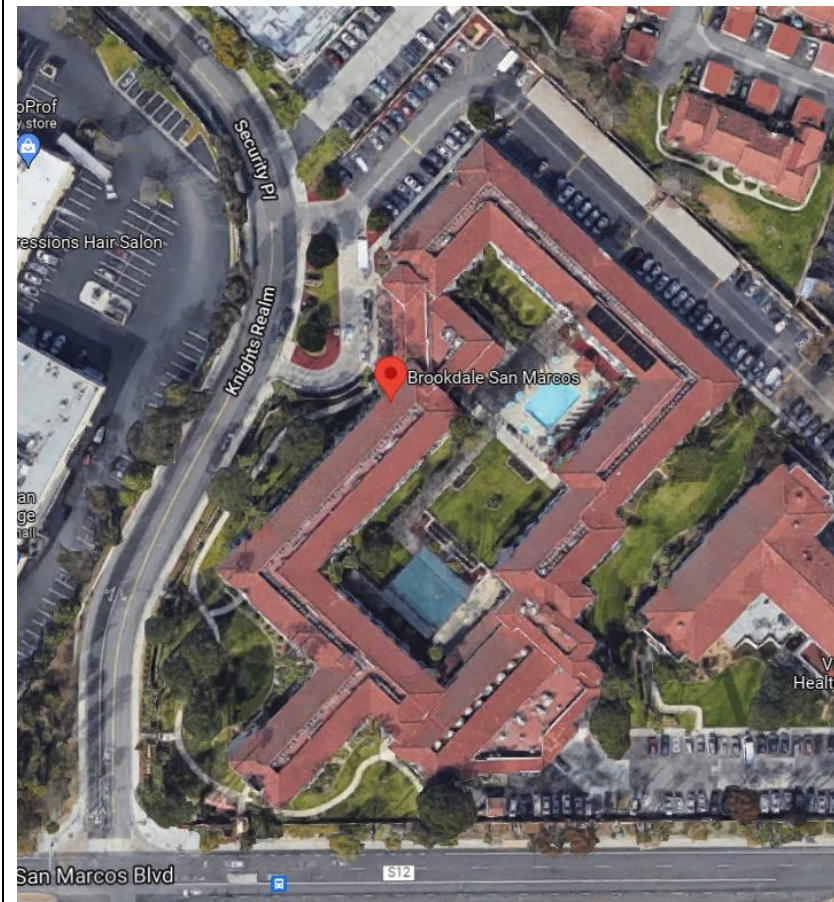
 An aerial photograph of the Brookdale Riverwalk facility. The facility consists of several large, light-colored buildings with flat roofs, surrounded by landscaped grounds with trees and walkways. A winding river, labeled "Kern River", flows along the right side of the facility. A road, labeled "Calloway Dr", runs along the left side. A red location pin is placed on one of the buildings, with the label "Brookdale Riverwalk" next to it.	<p><u>Brookdale Riverwalk</u></p> <p>350 Calloway Drive Bakersfield, CA 93312</p>
 An aerial photograph of the Brookdale Roseville facility. The facility is a large, multi-story building with a prominent red-tiled roof, surrounded by lush green trees. A parking lot with several cars is visible in front of the building. A red location pin is placed on the building, with the label "Brookdale Roseville" next to it. To the left of the building, a road is labeled "Somer Ridge Dr", and above the building, a road is labeled "Orlando Ave".	<p><u>Brookdale Roseville</u></p> <p>1 Somer Ridge Drive Roseville, CA 95661</p>

Exhibit 7



Brookdale San Jose

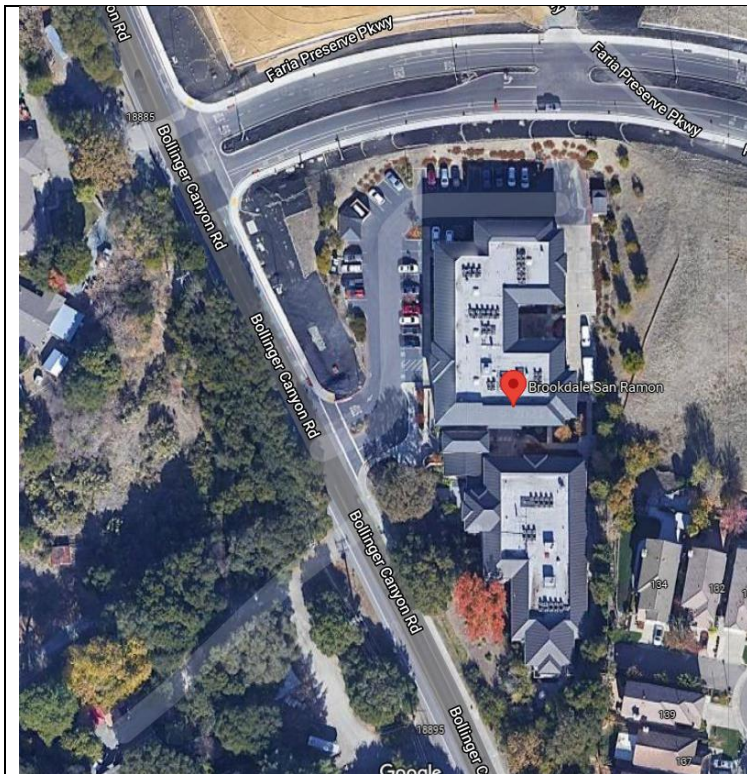
1009 Blossom River Way
San Jose, CA 95123



Brookdale San Marcos

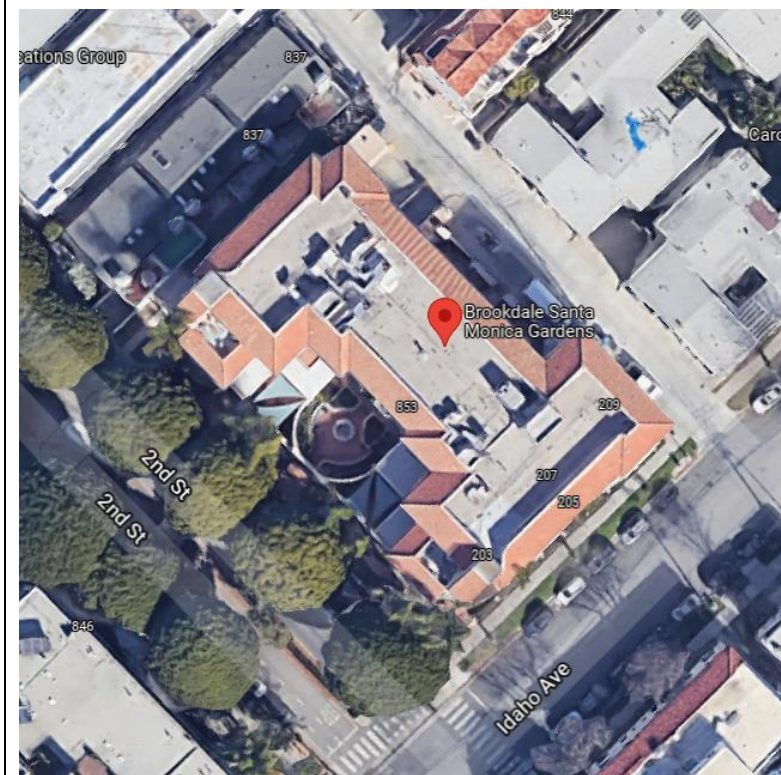
1590 West San Marcos Blvd
San Marcos, CA 92078

Exhibit 7



Brookdale San Ramon

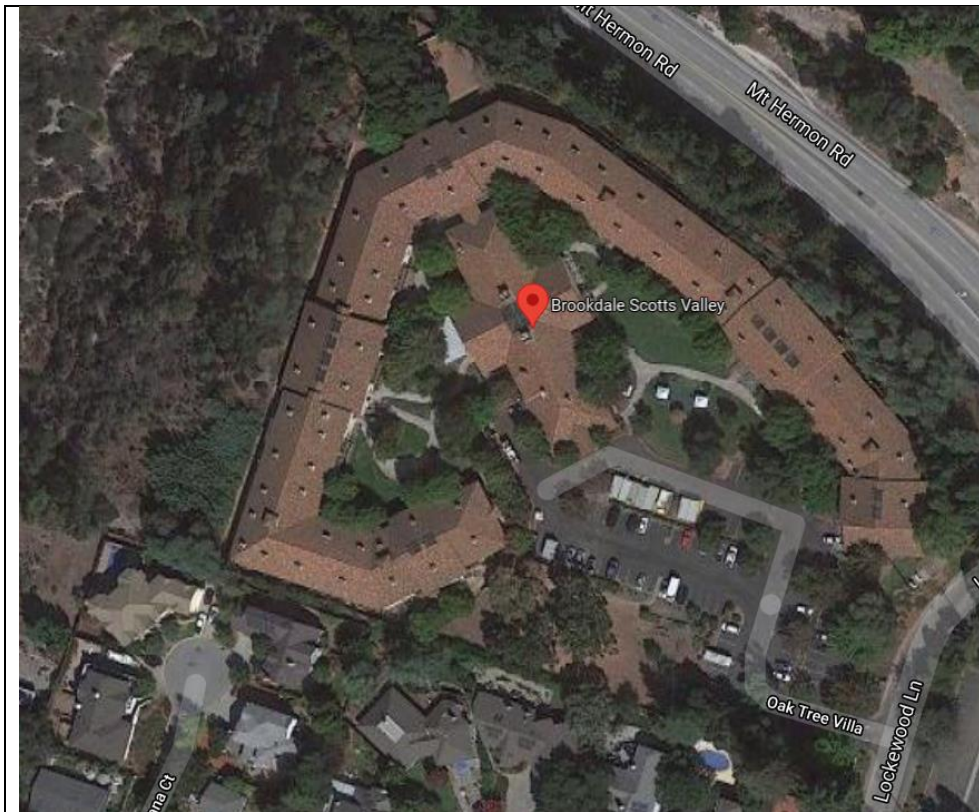
18888 Bollinger Canyon Rd
San Ramon, CA 94583



**Brookdale Santa Monica
Gardens**

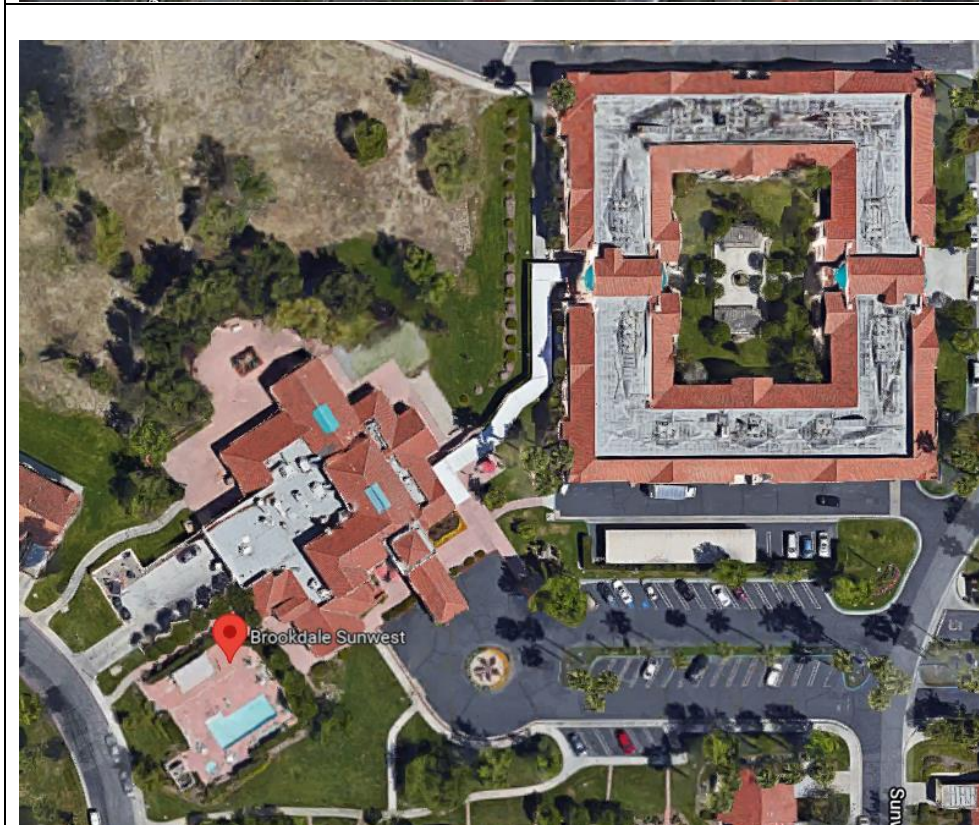
851 Second Street
Santa Monica, CA 90403

Exhibit 7



Brookdale Scotts Valley

100 Lockwood Lane
Scotts Valley, CA 95066



Brookdale Sunwest

1001 N Lyons Avenue
Hemet, CA 92545

Exhibit 7



Brookdale Tracy

355 West Grant Line Road
Tracy, CA 95376



**Brookdale Uptown
Whittier**

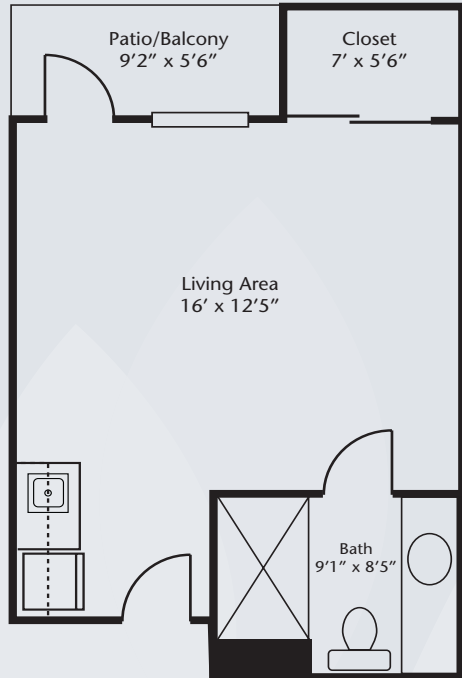
13250 Philadelphia Street
Whittier, CA 90601

Exhibit 7

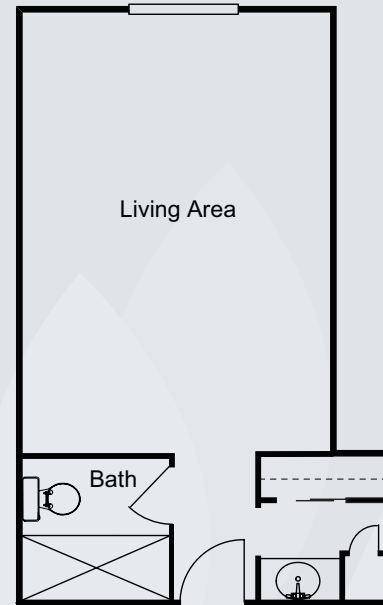
	<p><u>Brookdale Valley View</u> 5900 Chapman Ave Garden Grove, CA 92845</p>
	<p><u>Brookdale Windsor</u> 907 Adele Drive Windsor, CA 95492</p>

Exhibit 8**Studio Units****Brookdale Diablo Lodge**

Studio
415 sq. ft.

**Brookdale Anaheim**

Studio
204 sq. ft.

**Brookdale Garden Grove**

Studio
327 sq. ft.

**Brookdale Alhambra**

Studio C
410 sq. ft.

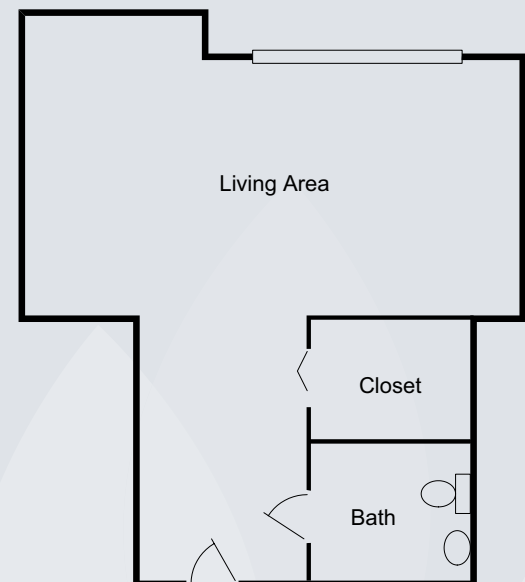
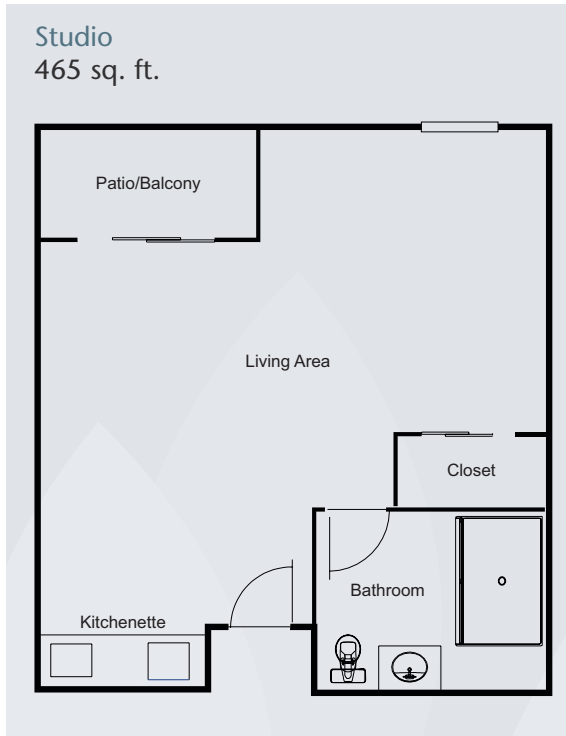
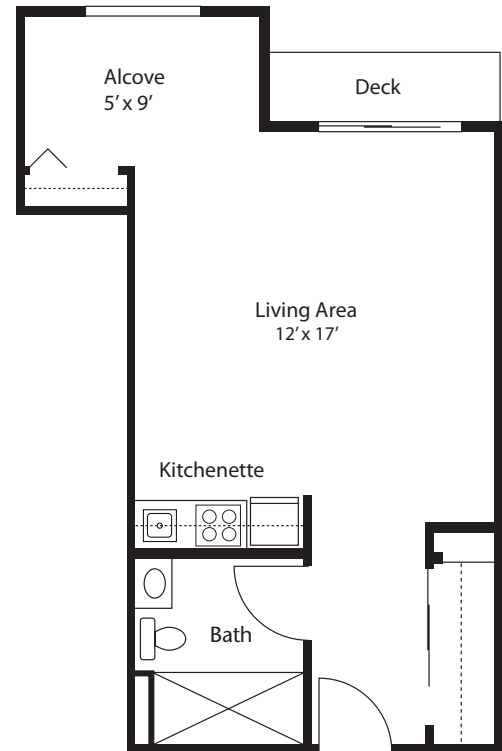


Exhibit 8**Studio Units****Brookdale Brookhurst**

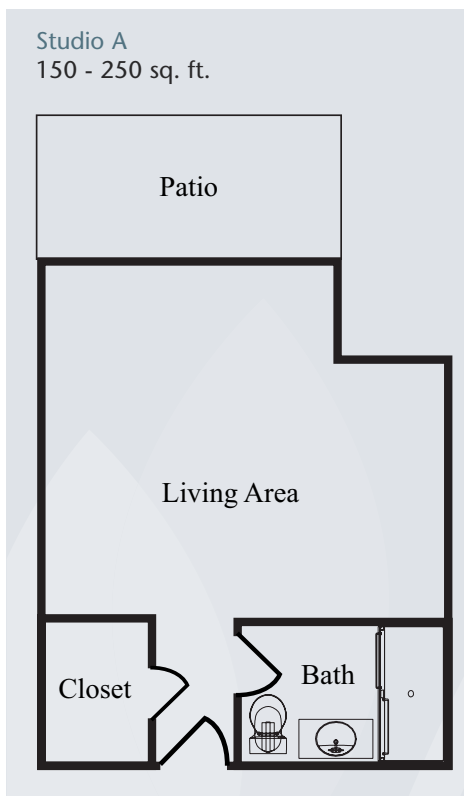
Studio
465 sq. ft.

**Brookdale Chanate**

Studio
Approx. 450 sq. ft.

**Brookdale San Ramon**

Studio A
150 - 250 sq. ft.

**Brookdale Irvine**

Villa
Approx. 379 sq. ft.

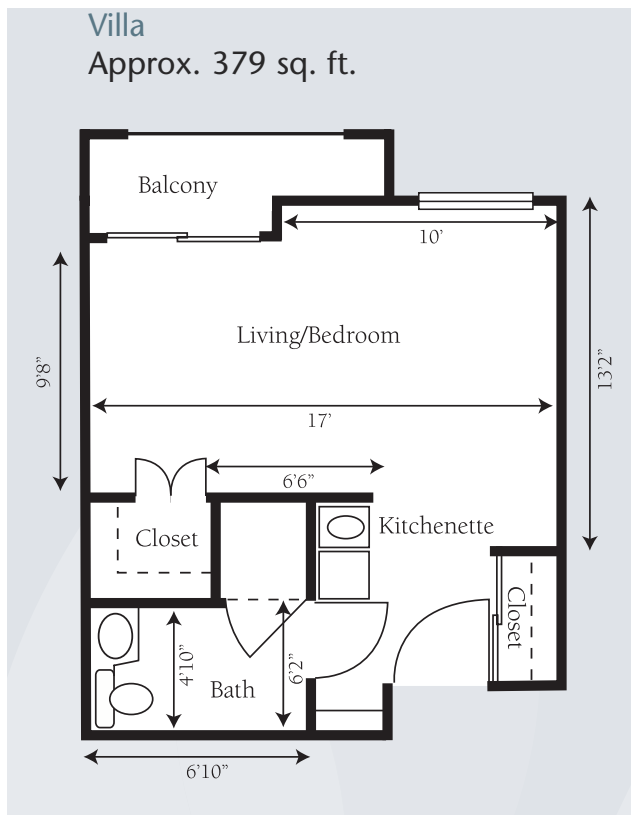
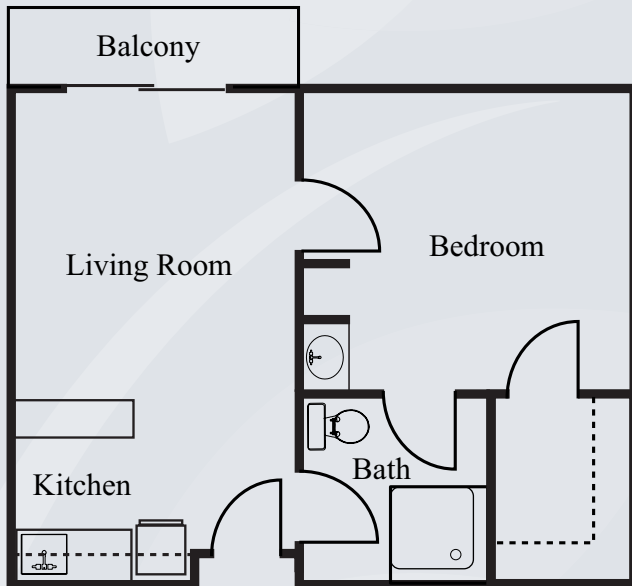
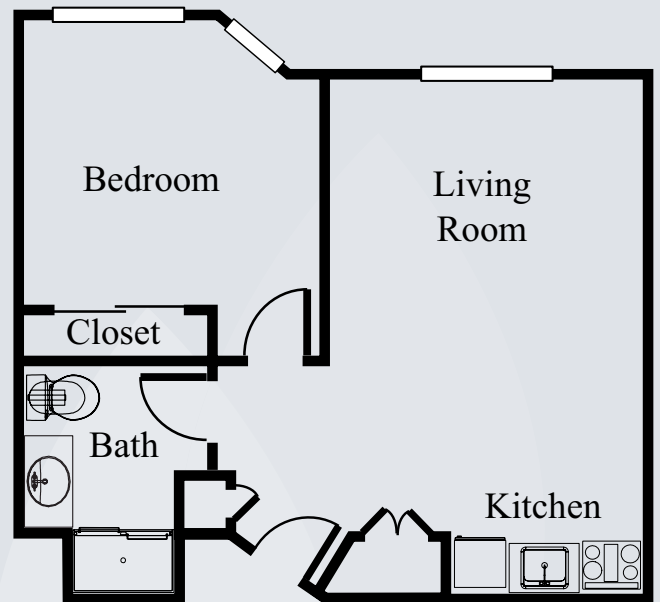


Exhibit 8**One Bedroom Units****Brookdale Uptown Whittier**

One Bedroom
500 sq. ft.

**Brookdale San Ramon**

One Bedroom A
582 sq. ft.

**Brookdale Napa**

One Bedroom
544 sq. ft.

**Brookdale San Jose**

One Bedroom
One Bedroom, One Bath
Approx. 600 sq. ft.

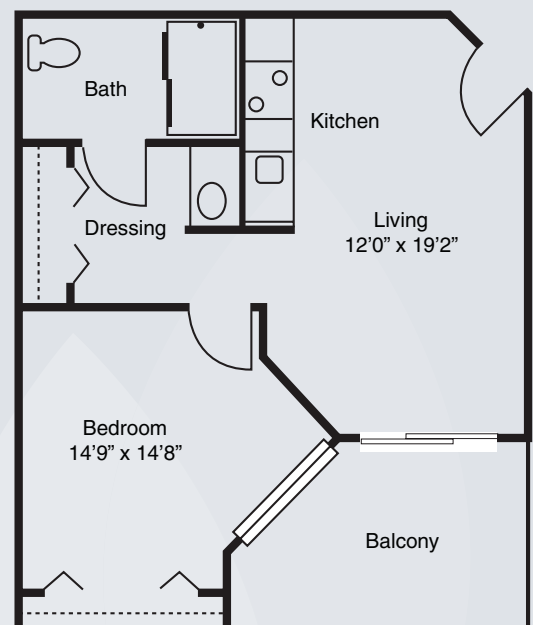
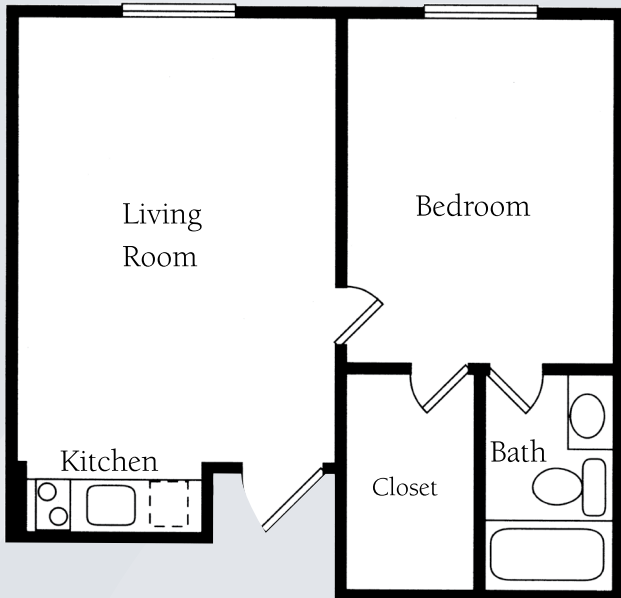


Exhibit 8**One Bedroom Units****Brookdale Monrovia**

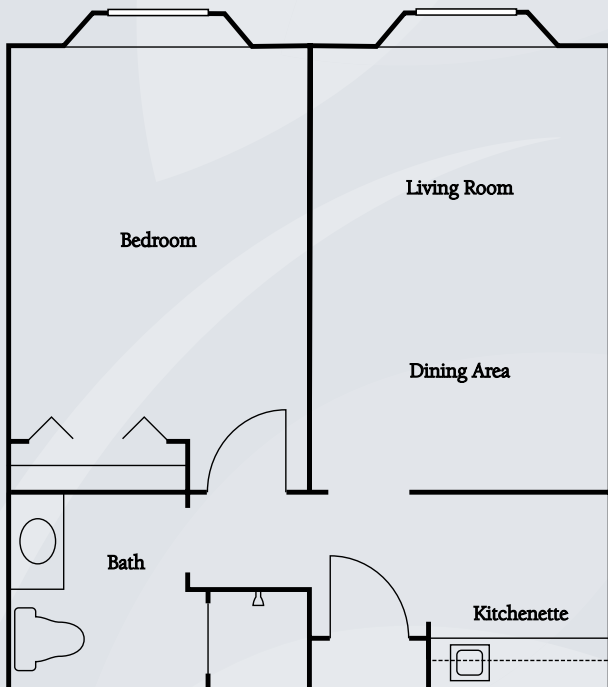
One Bedroom
456 sq. ft.

**Brookdale Anaheim Hills**

One Bedroom
Approx. 450 sq. ft.

**Brookdale Windsor**

Chardonnay
605 sq. ft.

**Brookdale Paulin Creek**

One Bedroom
678 sq. ft.

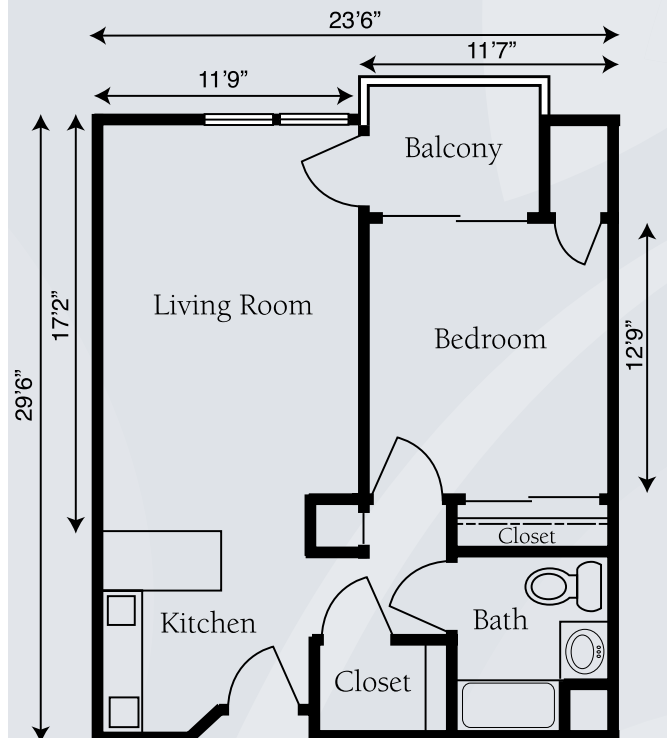
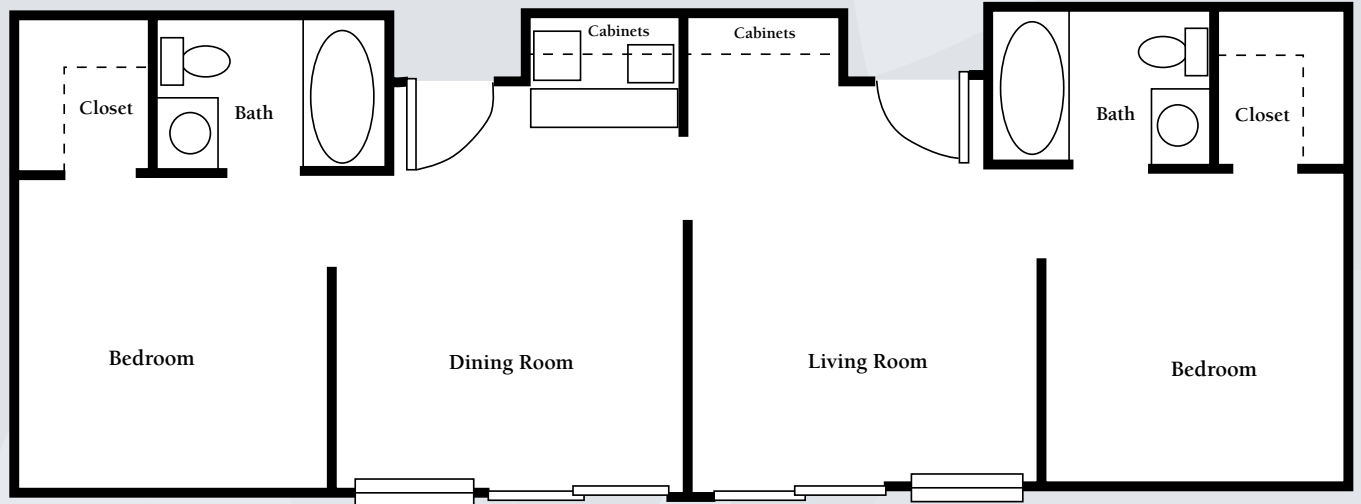


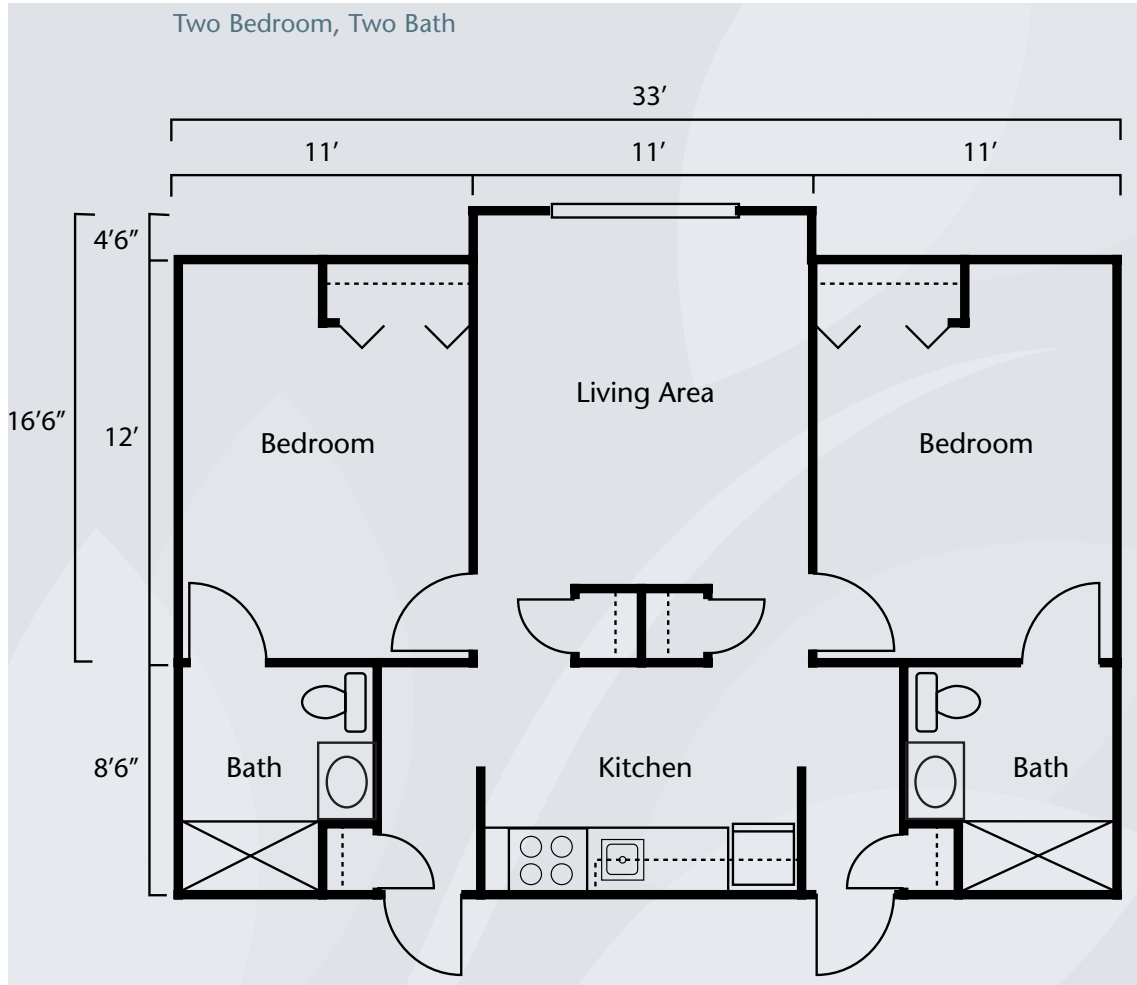
Exhibit 8**Two Bedroom Units****Brookdale Nohl Ranch**

Two Bedroom Apartment
Approx. 900 sq. ft.

**Brookdale Loma Linda**

Two Bedroom
900 sq. ft.



Exhibit 8**Two Bedroom Units****Brookdale Tracy****Brookdale Scotts Valley**

Two Bedroom H
1175 sq. ft.

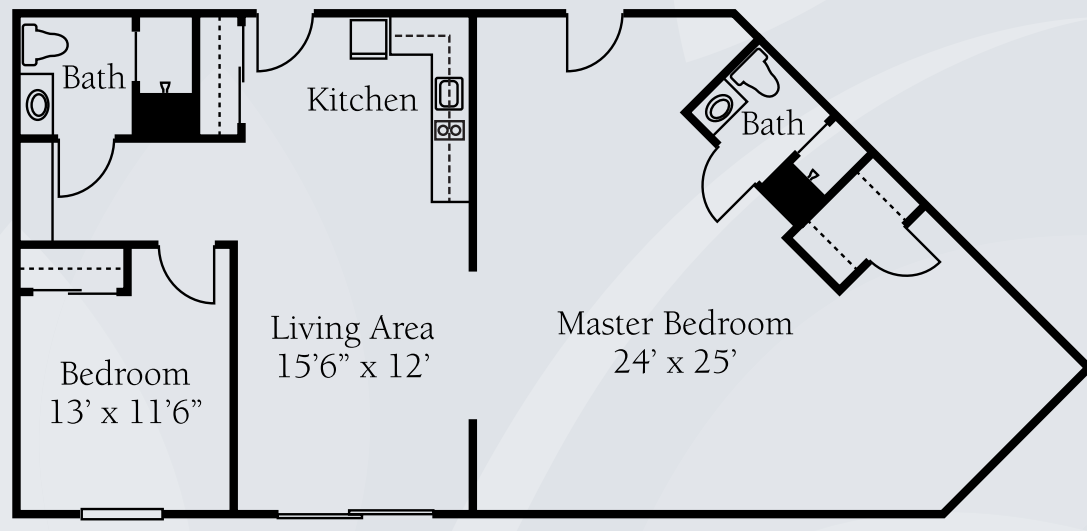


Exhibit 8**Two Bedroom Units****Brookdale San Jose****Two Bedroom**

Two Bedroom, One Bath

Approx. 800 sq. ft.

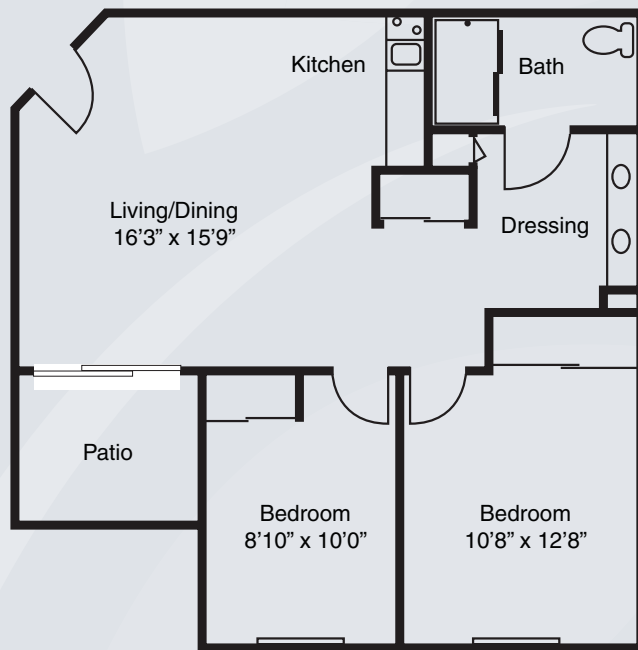
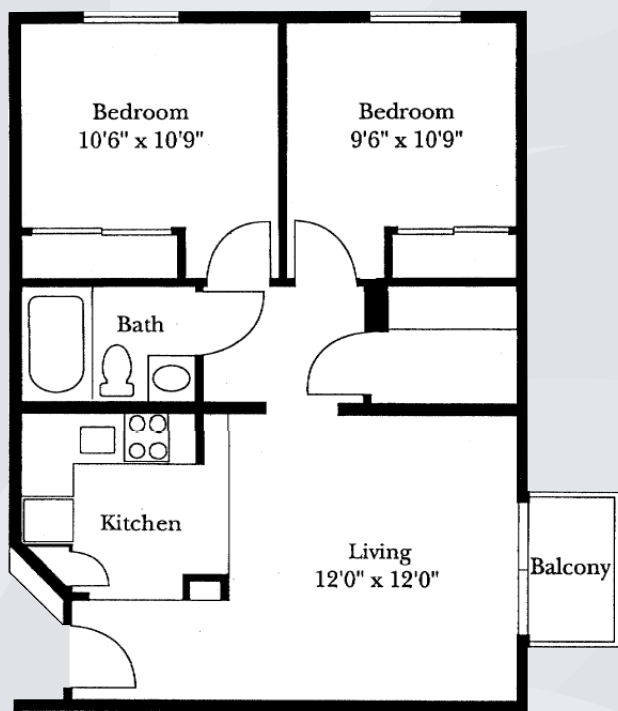
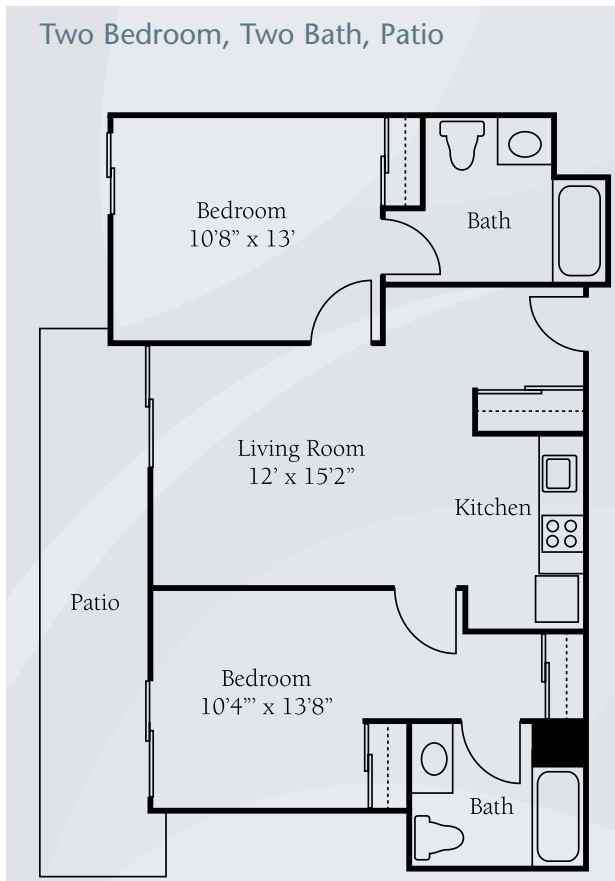
**Brookdale San Marcos****Two Bedroom**

Exhibit 8

Two Bedroom Units

Brookdale Redwood City

Two Bedroom, Two Bath, Patio



Corona Park

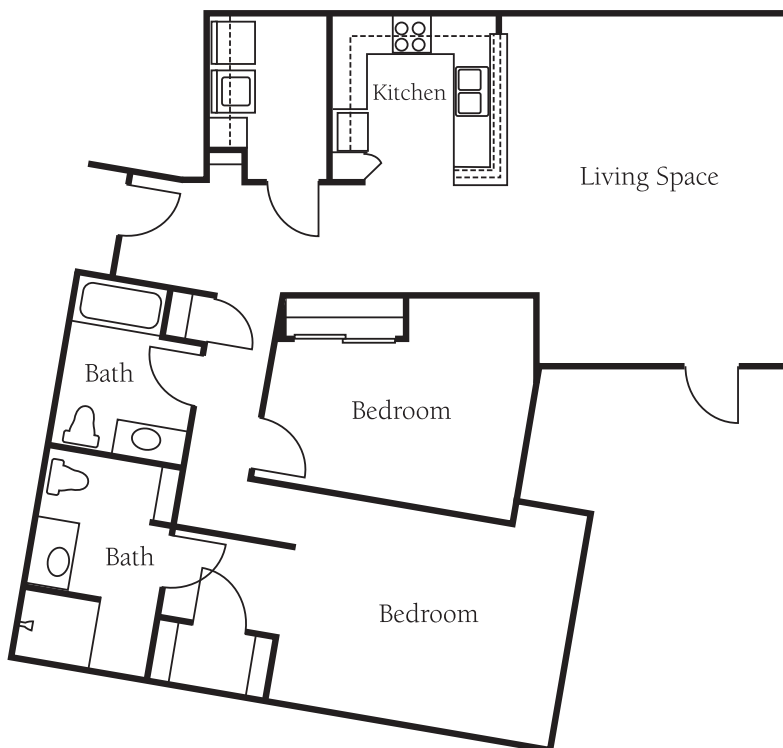


Exhibit 8

Two Bedroom Units

Brookdale Riverwalk

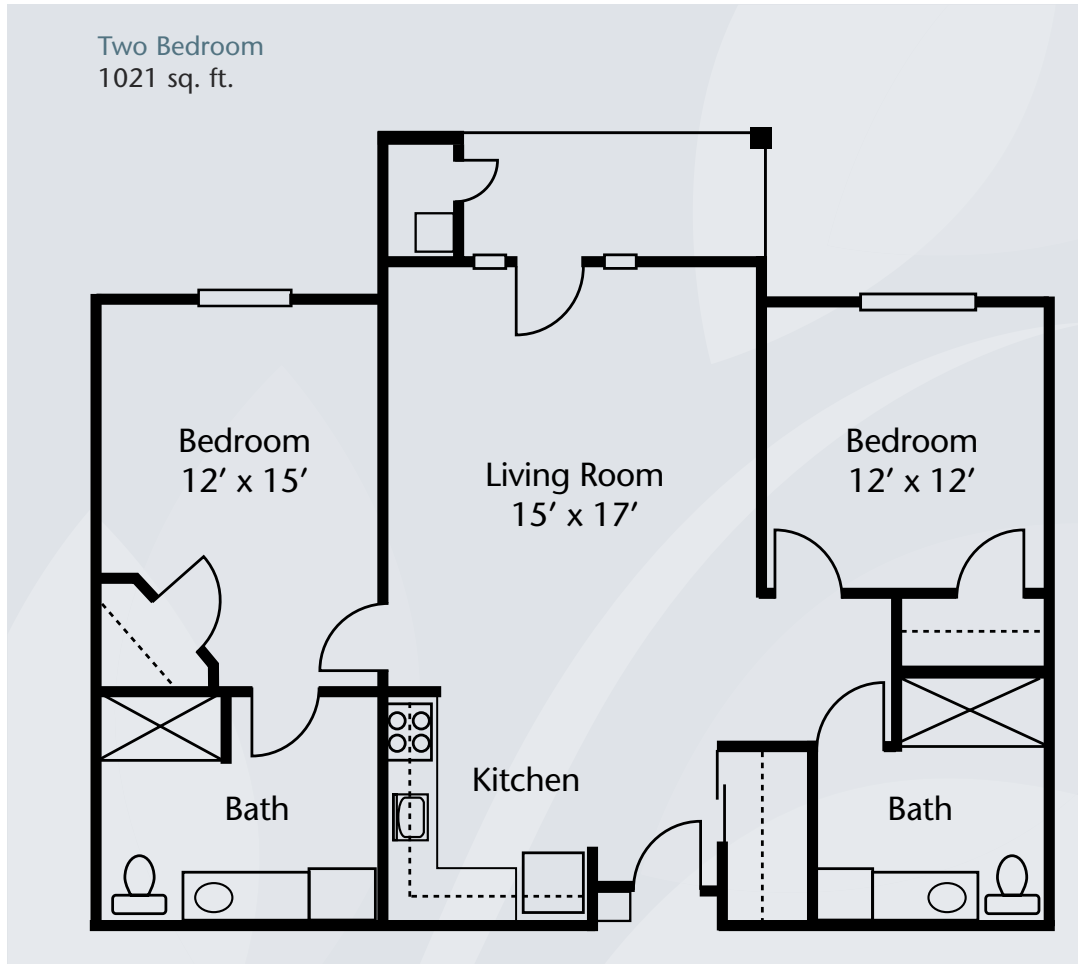


Exhibit 9




















Door Hardware				
Diablo Lodge				
	UNIT 179 - Entry Door	UNIT 247 - Entry Door	UNIT 175 - Bathroom Door	UNIT 247 - Bathroom Door
San Marcos				
	UNIT 107 - Entry Door	UNIT 107 - Entry Door	UNIT 108 - Bathroom	
Chanate				
	UNIT 106 - Entry Door	UNIT 106 - Bedroom Door	UNIT 212 - Entry Door	UNIT 212 - Bedroom Door
Windsor				
	UNIT 8 - Entry Door	UNIT 11 - Entry Door	UNIT 11 - Bedroom Door	UNIT 78 - Bedroom Door
Santa Monica Gardens				
	UNIT 228 - Bathroom Door	UNIT 315 - Bathroom Door	UNIT 228 - Balcony Door	UNIT 319 - Balcony Door

Exhibit 9








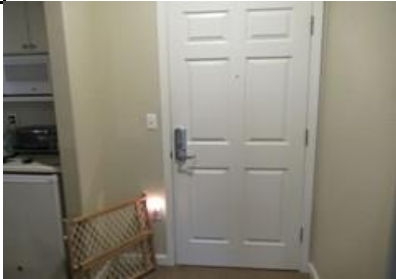


Door Pull Maneuvering Clearance					
Brookhurst					
	UNIT 129	UNIT 126	UNIT 103		
Diablo Lodge					
	UNIT 261	UNIT 261			
Windsor					
	UNIT 8	UNIT 8	UNIT 11	UNIT 11	UNIT 78

Exhibit 9

Toilet Clearance				
Anaheim	 UNIT 117	 UNIT 117	 UNIT 135	 UNIT 224
Brookhurst	 UNIT 129	 UNIT 126	 UNIT 103	
Loma Linda	 UNIT 105	 UNIT 106	 UNIT 185	 UNIT 277
Diablo Lodge	 UNIT 102	 UNIT 108	 UNIT 216	 UNIT 244
Santa Monica Gardens	 UNIT 228	 UNIT 315	 UNIT 318	 UNIT 319
				 Unit 109

Exhibit 9







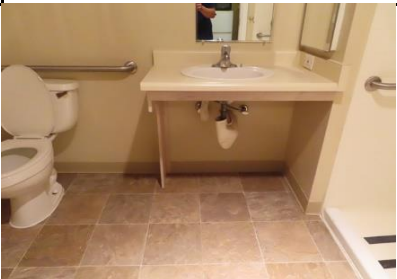

Lavatories				
Alhambra				
		UNIT 137	UNIT 208	
Brea				
	UNIT 103	UNIT 117	UNIT 137	UNIT 201
Diablo Lodge				
	UNIT 102	UNIT 108	UNIT 247	
Windsor				
	UNIT 8	UNIT 11		
Riverwalk				
	UNIT 213	UNIT 224	UNIT 228	UNIT 236

Exhibit 9

Bathing Fixtures					
Alhambra					
	UNIT 106	UNIT 107	UNIT 108	UNIT 08	UNIT 208
Loma Linda					
	UNIT 101	UNIT 105	UNIT 185		
Daiblo Lodge					
	UNIT 102	UNIT 216	UNIT 263	UNIT 177	UNIT 247
Chanate					
	UNIT 106	UNIT 205			
Nohl Ranch					
	UNIT 218	UNIT 252	UNIT 301	UNIT 303	

Exhibit 9


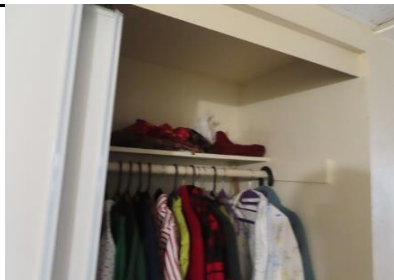


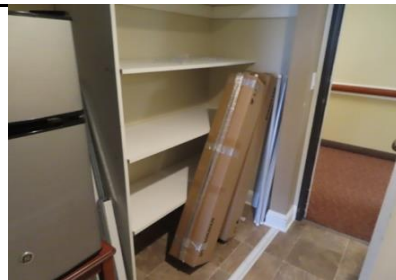
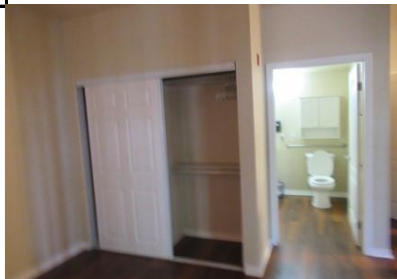



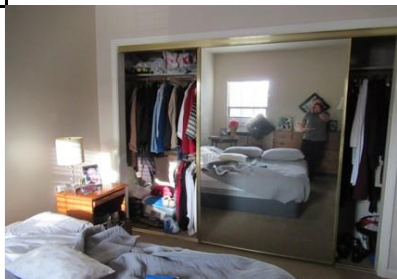

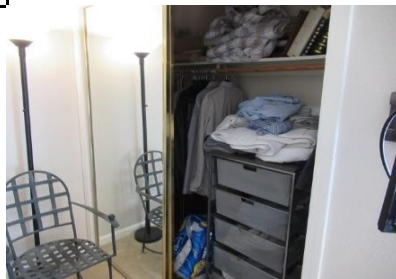







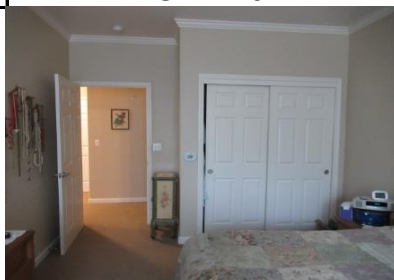
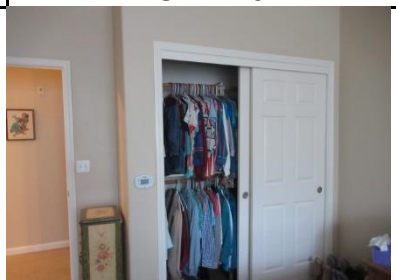
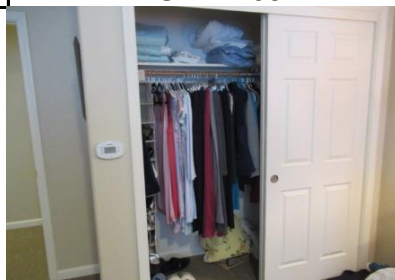

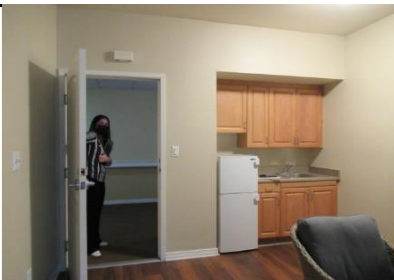






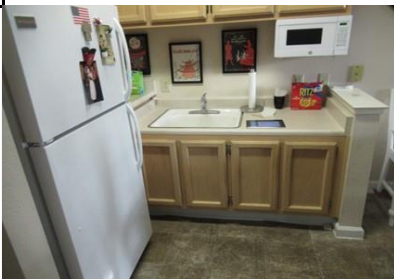

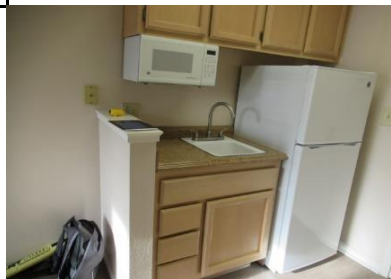


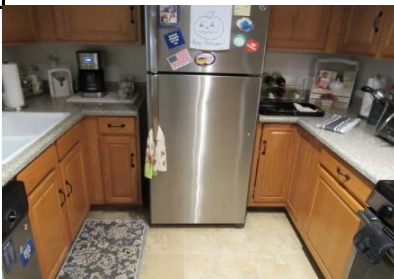

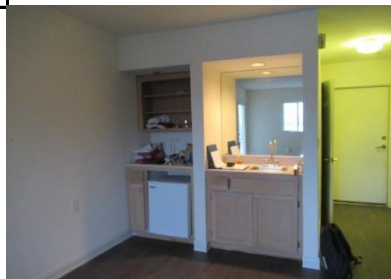

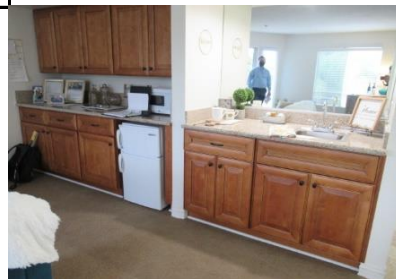
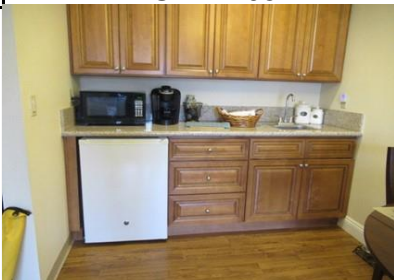

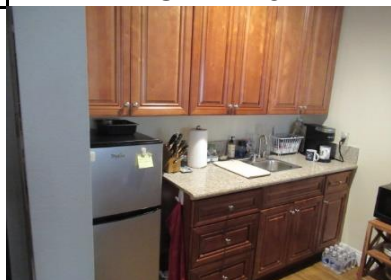


Closets					
Anaheim	 UNIT 117	 UNIT 118	 UNIT 120	 UNIT 225	 UNIT 329
Brookhurst	 UNIT 129	 UNIT 129	 UNIT 126	 UNIT 103	
Diablo Lodge	 UNIT 102	 UNIT 108	 UNIT 236	 UNIT 247	 UNIT 247
San Marcos	 UNIT 107	 UNIT 107	 UNIT 107	 UNIT 108	
Windsor	 UNIT 8	 UNIT 11	 UNIT 11	 UNIT 53	 UNIT 78

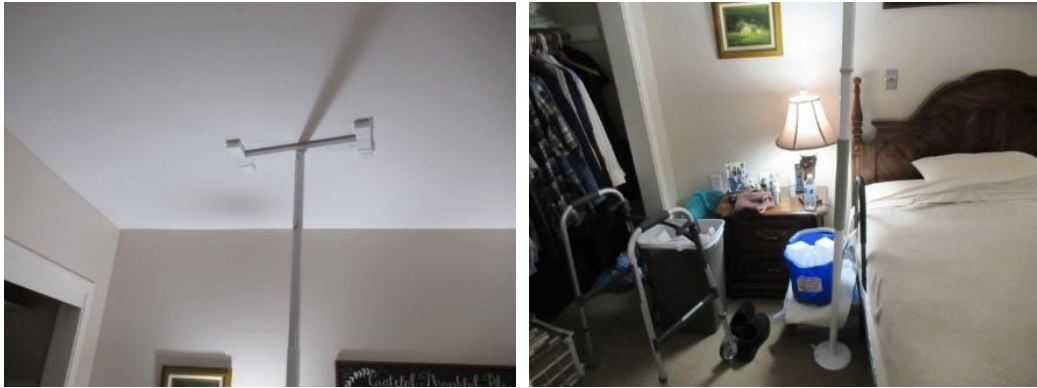
Exhibit 9

Kitchen / Kitchenette					
Brookhurst					
	UNIT 129	UNIT 129	UNIT 126	UNIT 103	UNIT 103
San Ramon					
	UNIT 3302	UNIT 2205			
Diablo Lodge					
	UNIT 102	UNIT 102	UNIT 108	UNIT 247	UNIT 177
Santa Monica Gardens					
	UNIT 105	UNIT 109	UNIT 228	UNIT 315	UNIT 319
Loma Linda					
	UNIT 101	UNIT 103	UNIT 170	UNIT 161	UNIT 286

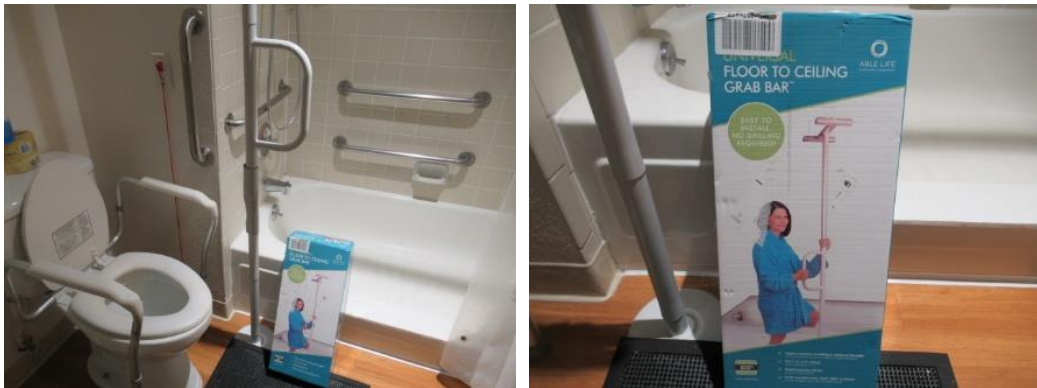
Reception Desks		
Diablo Lodge		
Windsor		
Uptown Whittier		
Loma Linda	 	
San Marcos	 	

Exhibit 10

Diablo Lodge – floor to ceiling grab bar next to the bed



Chanate – floor to ceiling grab bar between the toilet and bathtub



Riverwalk - floor to ceiling grab bar next to the toilet and outside the shower



Exhibit 10

Uptown Whittier – bathroom door and closet door removed

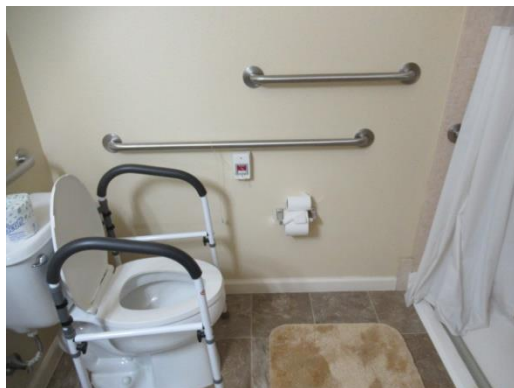


Santa Monica Gardens – resident request for a custom closet with adjustable shelves clothes rod

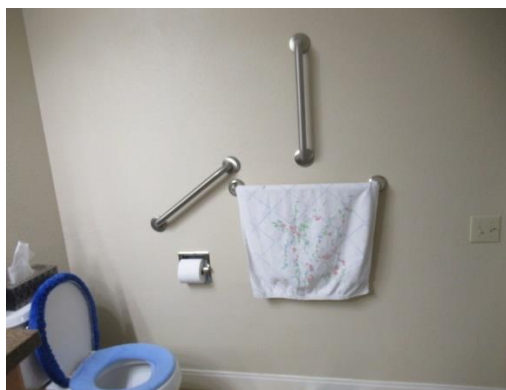
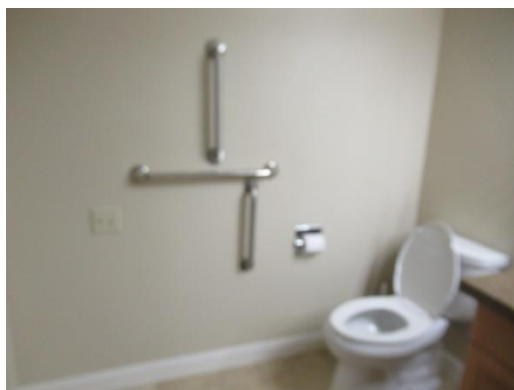


Exhibit 10

Cortona Park– resident request for additional grab bars



Paulin Creek – resident request for additional grab bars



Cortona Park –resident request for window shutters



Exhibit 10

Santa Monica Gardens – resident request for window and door shutters

